S. Hrg. 99-496

PROFESSIONAL SPORTS ANTITRUST IMMUNITY

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 172, S. 259, and S. 298

FEBRUARY 6, MARCH 6, AND JUNE 12, 1985

Serial No. J-99-2

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
53-690 O WASHINGTON : 1986

5521-37

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, Jr., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania
MITCH McCONNELL, Kentucky

JOSEPH R. BIDEN, Jr., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DeCONCINI, Arizona
PATRICK J. LEAHY, Vermont
HOWELL HEFLIN, Alabama
PAUL SIMON, Illinois

Dennis W. Shedd, *Chief Counsel and Staff Director*
Deborah K. Owen, *General Counsel*
Deborah G. Bernstein, *Chief Clerk*
Mark H. Gitenstein, *Minority Chief Counsel*

CONTENTS

STATEMENTS OF SENATORS

Page

Thurmond, Hon. Strom (chairman) 1, 133, 201
Specter, Hon. Arlen 12, 133, 202
Metzenbaum, Hon. Howard M 31
DeConcini, Hon. Dennis 33, 203
Grassley, Hon. Charles E 134, 339
Simon, Hon. Paul 135
Danforth, Hon. John C 205
Mathias, Hon. Charles McC., Jr 331
McConnell, Hon. Mitch 335

PROPOSED LEGISLATION

Text of S. 172—A bill entitled the "Professional Football Stabilization Act" 3
Text of S. 259—A bill to protect the public interest in stable relationships among communities, professional sports teams and leagues and in the successful operation of such teams in communities throughout the Nation, and for other purposes 209
Text of S. 298—A bill to clarify the application of the antitrust laws to professional team sports leagues, to protect the public interest in maintaining the stability of professional team sports leagues, and for other purposes 8

CHRONOLOGICAL LIST OF WITNESSES

WEDNESDAY, FEBRUARY 6, 1985

Cosell, Howard, ABC Public Relations, New York, NY 46
Moyer, Jay, counsel to the commissioner, National Football League, New York, NY, accompanied by Paul Tagliabue, cocounsel 59
Trump, Donald J., the Trump Organization, New York, NY 98
Upshaw, Gene, executive director, National Football League Players Association, Washington, DC, accompanied by Tim English, counsel, and Doug Allen, executive director, United States Football League Players Association, Washington, DC 102

WEDNESDAY, MARCH 6, 1985

Rozelle, Pete, commissioner, National Football League, New York, NY, accompanied by Paul Tagliabue, counsel 137
Usher, Harry L., commissioner, U.S. Football League, New York, NY 165
Stein, Gilbert, vice president and general counsel, National Hockey League, New York, NY 188
Foreman, Earl, commissioner, Major Indoor Soccer League, Bala-Cynwyd, PA 193

WEDNESDAY, JUNE 12, 1985

Gore, Hon. Albert, Jr., a U.S. Senator from the State of Tennessee 235
Panel consisting of: Hon. Paul Sarbanes, a U.S. Senator from the State of Maryland; former Senator Joseph Tydings on behalf of Gov. Harry Hughes, State of Maryland; and Hon. Barbara Mikulski, a Representative in Congress from the State of Maryland 245

Page

Panel consisting of: Edward Snider, president, Philadelphia Flyers Hockey Club, Philadelphia, PA; Hon. William Campbell, a State senator from the State of California, on behalf of the Los Angeles Memorial Coliseum Commission; and Hon. Charles F. Rule, Acting Assistant Attorney General, Antitrust Division, Department of Justice, Washington, DC 340
Panel consisting of: Russell Granik, executive vice president, business and legal affairs, National Basketball Association, New York, NY; George Vukasin, president, Oakland Coliseum Board, Oakland, CA; Alan I. Rothenberg, president, Los Angeles Clippers Basketball Club, Los Angeles, CA; and Neal Pilson, executive vice president, CBS Broadcast Group, New York, NY 406

ALPHABETICAL LISTING AND MATERIALS SUBMITTED

Allen, Doug: Testimony 105
Campbell, Hon. William:
  Testimony 342
  Prepared statement 345
  Excerpt from trial of *Los Angeles Memorial Coliseum Commission* vs. *National Football League, et al* 351
  Deposition of David J. Stern 360
  Letter to Chairman Strom Thurmond, reply to question from Senator Charles Grassley 376
Cosell, Howard: Testimony 46
English, Tim: Testimony 108
Foreman, Earl:
  Testimony 193
  Prepared statement 196
Gore, Hon. Albert, Jr.:
  Testimony 235
  Prepared statement 240
Granik, Russell:
  Testimony 406
  Prepared statement 407
Mikulski, Hon. Barbara A.:
  Testimony 251
  Prepared statement 253
Moyer, Jay:
  Testimony 59
  Prepared statement 71
  Memorandum to the NFL Club presidents from the National Football League, dated December 21, 1984 86
  Responses to questions of Chairman Strom Thurmond 89
Pilson, Neal H.:
  Testimony 425
  Prepared statement 427
Rothenberg, Alan I.:
  Testimony 409
  Prepared statement 412
Rozelle, Pete:
  Testimony 137
  Response to questions from Chairman Strom Thurmond 159
  Questions from Senator Patrick Leahy 195
Rule, Hon. Charles F.:
  Testimony 377
  Prepared statement 379
  Response to questions submitted by Senators Grassley and Mathias 398
Sarbanes, Hon. Paul:
  Testimony 245
  Prepared statement 247
Snider, Edward: Testimony 340
Specter, Hon. Arlen:
  Several letters to Commissioner Rozelle and their responses 15
  Responses to questions of Chairman Thurmond 28
  "Sportsbeat" show of December 15, 1984, ABC-TV Sports 36
Stein, Gilbert: Testimony 188
Tagliabue, Paul: Testimony 146
Thurmond, Chairman Strom:
  Questions for Howard Cosell 57

Thurmond, Chairman Strom—Continued Page
  - Answers 58

Tydings, Joseph:
  - Testimony 256
  - Prepared statement of Gov. Harry R. Hughes 257
  - Resolution 266
  - Draft amendment to S. 259, re league expansion 267
  - House Concurrent Resolution submitted by Ms. Mikulski 269
  - "Proposed Sports Relocation Legislation: Background and Legal Implications," Congressional Research Service, Library of Congress, dated May 24, 1985 277

Upshaw, Gene:
  - Testimony 102
  - Prepared statement 109
  - Letter to Chairman Strom Thurmond from the Department of Justice, dated November 29, 1982, agency view of S. 2784 119
  - Answers to questions submitted by Chairman Strom Thurmond 127

Usher, Harry L.:
  - Testimony 165
  - Prepared statement 171
  - Excerpt from House Judiciary Committee hearing, August 28, 1961, "Telecasting of Professional Sports Contests" 178
  - House Report No. 1178 182

Vakasin, George:
  - Testimony 417
  - Prepared statement 419
  - "The League in Court," from the Washington Post, November 1, 1984 424

PROFESSIONAL SPORTS ANTITRUST IMMUNITY

WEDNESDAY, FEBRUARY 6, 1985

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Specter, DeConcini, Metzenbaum, and Grassley.

Staff present: Deborah K. Owen, Pete Kulmala, Neal Manne, Ed Baxter, and Steve Ross.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

Today, the committee begins a series of hearings on legislation which addresses the antitrust implications of relocating professional sports teams. Bills have been introduced by two members of this committee, Senators DeConcini and Specter, and the Commerce Committee is considering other approaches. All of these measures reflect a deep concern in the Congress about team movements which occur despite the support of loyal fans and local governments.

These hearings are generated by the public outcry following relocations and proposed moves involving several teams, including the Oakland Raiders and, most recently, the Philadelphia Eagles.

In Baltimore, MD, to the consternation of outraged fans and city officials, the Colts' assets were removed in the middle of the night. Other relocations are rumored.

Because of the antitrust implications and other Federal interests, congressional inquiry into this area is appropriate. However, we must be ever mindful of the need to limit Federal Government intrusion into matters best left to private enterprise.

It is therefore incumbent upon us to determine what degree of Federal involvement serves the public interest in this area. Obviously, professional sports leagues are not like public utilities, but clear public concerns are involved. What, then, is an appropriate role?

As chairman of this committee, I am committed to a full and fair examination of the legislation which we have before us this morning and any related measures. I will work to ensure that interested parties on both sides of the issue have an equal opportunity to present their views.

Today, our witnesses will focus on certain questions relating to professional football. The committee will conduct additional hearings to examine, among other things, the impact of this legislation on other sports.

At this point I wish to place copies of S. 172 and S. 298 into the record.

[Texts of S. 172 and S. 298 follow:]

II

99TH CONGRESS
1ST SESSION

S. 172

Entitled the "Professional Football Stabilization Act".

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 1985

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

Entitled the "Professional Football Stabilization Act".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Professional Football Stabilization Act of 1985".

SEC. 2. (a) The Congress finds that—

(1) professional football teams achieve a strong local identity with the people of the cities and regions in which they are located, providing a source of pride to their supporters;

(2) professional football teams provide a valuable form of entertainment in the cities and regions in which they are located;

(3) substantial tax revenues and employment opportunities derive from the operation of professional football teams to the cities and regions in which they are located;

(4) the public, through a municipal stadium authority (which may be a city or county agency, or a municipal corporation) generally authorizes capital construction bonds to build a stadium, while the team's lease or use agreement generally sets rent to cover only operating costs of the stadium, without reimbursing the public for construction costs;

(5) professional football teams are invested with a strong public interest; and

(6) professional football teams utilize materials shipped in interstate commerce, professional teams travel interstate to compete and professional games are nationally broadcasted.

(b) The Congress, therefore, finds and declares that professional football teams are affected with a strong public interest, that professional football affects interstate commerce, and that it is the national policy to discourage the relocation of professional football teams receiving local support.

Sec. 3. The Act of September 30, 1961 (75 Stat. 732; 15 U.S.C. 1291–1295) is amended—

(1) by redesignating after section 4 as section 7 and striking out all after section 7, as redesignated;

(2) by inserting after section 3 of the following: "SEC. 4. It shall be unlawful for any professional football team which has played its home games in a municipality for six continuous years or more to relocate unless—

"(1) one or more of the other parties of the stadium lease agreement materially breaches a provision of the agreement essential to profitability, and such noncompliance cannot be remedied within a reasonable period of time;

"(2) the stadium in which the team wishing to move presently plays is inadequate for the purposes of profitably operating the team, and the stadium authority demonstrates no intent to remedy such inadequacies; or

"(3) the team has incurred an annual new loss for at least three consecutive years immediately preceding the relocation, or has incurred losses in a shorter period that endanger the continued profitability of the team; and in computing net losses of the team, no personal obligations or losses of the owner may be included in salaries, other compensation or expenses to owners or owners' family members except to the extent they are ordinary, reasonable and necessary compensation and expenses: *Provided, however,* That an owner of a professional football team who seeks to relocate shall provide written notification of such intention to the local governmental authority at least one hundred and twenty days before relocation. Where an owner intends to sell the team and relocate it, the governmental authority shall decide whether the criteria for relocation have been satisfied and if it finds that they have been, the governmental authority or any person it selects shall have a right of first refusal and may make an offer to purchase and retain the team. If any such retention offer substantially equals the relocation offer, then relocation shall be unlawful.

In the event that the local governmental authority concludes that the owner has not satisfied the provisions of section 4, a civil action may be commenced pursuant to the provisions of section 6.

"SEC. 5. The antitrust laws, as defined in section 1 of the Clayton Act, and the Federal Trade Commission Act, shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional sport of football which restricts the movement of any member team in accordance with the criteria provided in section 4.

"SEC. 6. Any government authority in a municipality from which a professional football team relocates or seeks to relocate may bring a civil action to prevent such relocation and for other equitable relief and damages if such relocation does not comply with section 4, and the Federal district court shall have jurisdiction over such action.";

(3) by inserting after "section 1" in section 7, as redesignated, "and section 5",

(4) by inserting after section 7, as redesignated, the following:

"Sec. 8. For purposes of this Act:

"(1) the term 'persons' means any individual partnership, corporation or unincorporated association or combination or association thereof;

"(2) the term 'relocate' means to change the location in which a team plays its home games from one municipality to another;

"(3) the team 'government authority' means any unit of general local government or other government agency or authority which exercises regulatory authority with respect to a professional sports team; and

"(4) the term 'municipality' means a city, county or other political subdivision of a State.".

○

II

99TH CONGRESS
1ST SESSION

S. 298

To clarify the application of the antitrust laws to professional team sports leagues, to protect the public interest in maintaining the stability of professional team sports leagues, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 21), 1985

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To clarify the application of the antitrust laws to professional team sports leagues, to protect the public interest in maintaining the stability of professional team sports leagues, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sports Community Protection and Stability Act of 1985".

FINDINGS AND DECLARATIONS

SEC. 2. The Congress finds and declares that the public has an interest in preserving stability in the relationship between professional sports teams and the communities in which they operate and in encouraging professional team sports leagues to promote the economic and geographic stability of their member clubs: Therefore, be it enacted, that—

(1) it shall not be unlawful by reason of any provision of the antitrust laws for a professional team sports league and its member clubs—

(a) to enforce rules or agreements authorizing the membership of the league to decide that a member club of such league shall not be relocated from its league-franchised home area provided that nothing in this subsection shall otherwise affect the applicability or nonapplicability of the antitrust laws to any action instituted by a municipality or other public authority challenging the relocation of a club from its league-franchised home area; or

(b) to enforce rules or agreements for the division of league or member club revenues that tend to promote comparable economic opportunities for the member clubs of such a league;

(2) subject to the terms of subsection 1(a) of this section, any civil action under the antitrust laws to challenge a league decision granting permission to a member club to relocate must be commenced in a United States district court having jurisdiction under

title 28, United States Code, section 1331, except that no such action may be brought in any district wherein such member club is located or to which such member club proposes to relocate.

INAPPLICABILITY TO CERTAIN MATTERS

SEC. 3. Nothing contained in this Act shall—

(a) be deemed to change, determine, or otherwise affect the applicability or nonapplicability of the labor laws, the antitrust laws, or any other provision of law to the wages, hours, or other terms and conditions of player employment within any sports league, to any player employment matter within any sports league, or to any collective-bargaining rights and privileges of any player union within any sports league;

(b) exempt from the antitrust laws any agreement to fix the prices of admission to sports contests;

(c) exempt from the antitrust laws any predatory practice or other conduct with respect to competing sports leagues which would otherwise be unlawful under the antitrust laws; or

(d) modify any existing Federal statutes relating to ~~the~~ television practices of sports leagues, or change, determine, or otherwise affect the applicability or nonapplicability of the antitrust laws or communications laws to any form of joint dealing practices by sports leagues with respect to the sale of any form of television.

FEDERAL PREEMPTION

SEC. 4. Notwithstanding any other provision of law, no State or political subdivision thereof shall establish, maintain, or enforce any regulation of commerce that imposes any limitation on the collective conduct of professional team sports leagues or their member clubs authorized by this Act.

DEFINITIONS

SEC. 6. For purposes of this Act, the term "professional team sports league" means the organized professional team sports of basketball, football, hockey, or soccer.

∩

The CHAIRMAN. Now, we have a number of witnesses here today and I have some conflicts. When I have to leave, I am going to ask the distinguished Senator from Pennsylvania, a member of this committee, Senator Specter, to preside over this hearing.

Now, Senator Specter, I believe you wanted to testify first on this matter yourself, did you not?

Senator SPECTER. Yes, I do, Mr. Chairman.

The CHAIRMAN. So you may now proceed.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman. At the outset, I thank you, Senator Thurmond, for convening these hearings and for being so cooperative on this, as so many matters which are brought to your attention in your capacity as chairman of the Judiciary Committee, and I have special appreciation for working with you in the course of the past 4 years, and for the very prompt hearings which you convened within the space of 10 days in August 1982 when this same matter was before this committee relating to the Raiders move, and your willingness to convene these hearings right at the conclusion of the matters relating to the Attorney General's confirmation process.

And I have chosen to testify in the witness role because I have introduced Senate bill 172 and I shall be as brief as I can. I realize that you must depart here shortly to open the Senate in your capacity as President pro tempore of the Senate.

This is a matter of enormous importance, Mr. Chairman, and some might raise a question as to why the U.S. Senate is concerned with professional football at a time when there are so many overriding problems of the budget, economy, jobs, the deficit.

And I respond to that by pointing out the enormous economic influence of professional football in our country, the tremendous number of jobs which professional sports provides and are related to in terms of tourism and hotels and restaurants, and that as the Senator from Pennsylvania, which has teams like the Steelers and the Eagles, the Phillies and the Pirates, the 76ers, Flyers, and Penguins, it is a matter of enormous concern to Pennsylvania and to this Senator when there is a prospective move of a team like the Eagles.

And I can say from firsthand experience about the tremendous impact that sports makes on my State and on the Nation as a whole, and it goes all the way from sophisticated psychological evaluations to the tensions of factory workers to release on Sunday watching professional football, to the fantastic parades when the Flyers won the championship in hockey. Pandemonium broke loose in the city of Philadelphia, and Pittsburgh prides itself as the city of champions.

And sports has an enormous impact on the psyche and on the economy of this country, and it is a matter of really great significance, so that it is appropriate for us to take up this matter on a day where later we will hear the President on the State of the Union speech on matters of overriding importance on the economy, deficits, international affairs, and so forth.

I am especially concerned at this moment about the future of the Philadelphia Eagles, and it has been occasioned by the proposed sale of that franchise to Phoenix, AZ, in a context which put the city of Philadelphia in a state of near frenzy, with a roller coaster series of events which finally led to an arrangement where the Eagles would not be sold and would not be moved conditioned on major concessions made in a number of directions.

And as of this moment, Mr. Chairman, I am very much concerned about the viability of those arrangements and about whether the Philadelphia Eagles can stay there with a team that is reportedly $30 million in debt.

And so much of a team's ability to compete turns on the ability to pay salaries and to run a top-flight organization, and if the Eagles are not in a position to compete, fans may lose interest and there may be a situation arise where some could say there was just cause for a move.

I have written to the commissioner of football on a series of letters which I would like to make a part of the record, dated December 13, December 17, and December 27, 1984, and replies from the commissioner on December 19, 1984, and January 5, 1985, which leave more questions unanswered than questions have been answered.

And I am sorry that the commissioner could not be here today, Commissioner Rozelle, and I know the chairman plans additional hearings and we will hear from a representative from the National Football League. But this problem continues as to Philadelphia and as to the Nation.

And in introducing Senate bill 172, which was the first of four bills introduced in this session, I did so on the opening day of the Senate, on January 3, because of what I conceived to be the importance of this matter to my State.

But it was not only the Eagles which aroused my interest in this subject, but I took a leading role back in 1982 when it was the Oakland Raiders who were about to move to Los Angeles, and introduced Senate bill 2821 at that time.

And the essence of Senate bill 172, which carries forward most of the provisions of Senate bill 2821, is to recognize a form of an interest, a special interest, which football fans have.

And my bill is limited to football, unlike the other bills which have been introduced in the 99th Congress, and I have limited it to football because I do not think we ought to take a broader approach than necessary for the current problem.

And I am very cognizant of the comments made by the chairman in his opening remarks about the Congress not intruding on private business arrangements, but leaving to the private sector the regulation of private sector affairs.

But I believe that Congress has special standing on the question of professional football because professional football enjoys its preferred status as a result of special grants by the Congress on exemptions from the antitrust laws on the pooling of television receipts and on the antitrust exemption when there was a merger of the two football leagues.

So when the Congress may ask professional football to arrange its affairs to recognize the fans' interest, I think it is fair play for this kind of a relatively minor concession in exchange for the largesse which the Congress has granted professional football.

And it is illustrated by the business of the revenue sharing on television. Were it not for revenue sharing on television, professional football could not exist in its present form. And it is doubtless a factor that expansion is limited because of the reluctance of professional football to share those revenues even further.

But it comes into sharp play in Philadelphia. It would be unthinkable, absent revenue sharing, for a team to move from Philadelphia, PA, to Phoenix, AZ, given the enormous revenues of the television market in Philadelphia, which is the fourth largest in the United States.

And in a very fundamental sense, the Philadelphia Eagles' fans have alread paid a disproportionate share to professional football by paying for the advertising which is a part of the Philadelphia television market.

And then to have the Philadelphia city undertake expenditures in the range of $30 million because the National Football League has not put its house in order is, I suggest, understated, an absolute outrage to have that occur.

The National Football League, prior to the Eagles incident, had established no standards whatsoever. They have since established some procedures, and that is going to be explored during the course of this hearing.

But my reading of the law in the Federal courts on the Raiders case leaves ample latitude for the National Football League to establish reasonable standards for franchise moves. They currently have a standard which requires 24 of 28 owners to agree before a franchise can be moved. That has been held unreasonable, in violation of the antitrust laws.

But the Federal court said in the *Raiders* case that if it were a simple majority, that would pass antitrust standards. The Federal courts have further said that if standards are imposed, it would conform to the antitrust laws.

And, essentially, what Senate bill 172 seeks to do is to grant a limited antitrust exemption which would authorize the league to establish such standards; essentially stated, that if a team was making money and had a decent stadium, they could not move. But they could not move to change significant profits to enormous profits; that at that stage, the fans do have an interest and the orderly affairs of the league ought to be undertaken in that event.

Mr. Chairman, I have a great deal more to say which I shall reserve for another occasion because I know you must leave momentarily to open up the Senate. But that is the essence of what I have to say and I would request unanimous consent that this correspondence appear in the record at this point.

The CHAIRMAN. Without objection, so ordered.

[The following were received for the record:]

United States Senate
WASHINGTON D.C. 20510

December 13, 1984

Commissioner Pete Rozelle
The National Football League
410 Park Avenue
New York, NY 10022

Dear Commissioner Rozelle:

Following our discussion yesterday morning, I have a suggestion for action by you and the NFL owners when you meet next Tuesday, December 18.

It is my thought that the NFL should establish a timetable, with appropriate notice under your Bylaws, to convene a meeting of league owners at the earliest practical date to establish rules which would preclude the move of the Eagles from Philadelphia to Phoenix or any similar move of an NFL franchise.

I urge that you and the owners adopt a rule which would establish standards for a team move and would require a simple majority vote of the owners to allow that move under the application of those standards. As you doubtless know, the court in the Raiders case suggested that a simple majority vote would be within the rule of reason and the opinions in that case referred to the establishment of standards governing such moves.

As to standards, it seems to me that it would be appropriate to consider factors such as fan support, length of tenure of the team in the city, the condition of the stadium, the profitability of the team over a reasonable period such as three years, and similar factors.

If prompt action were taken by the National Football League, such a rule could be in place before the move of the Eagles from Philadelphia to Phoenix could be fully consummated.

If the NFL were to adopt such a rule in response to the Raiders' court decisions and the move of the Colts and the prospective move of the Eagles, it is my thought that the Congress would be very sympathetic to legislation which would make it plain that such a rule did not violate antitrust laws. When considering that rule, I think the Congress would also be favorably disposed to "sprinkling holy water," as you put it in our conversation yesterday, on some of the other rules which the NFL needs for the orderly processing of its business.

In the light of the serious complication that an Eagles move to Phoenix would present on the pending antitrust suit by the USFL against the NFL, it seems to me that there is strong motivation for the NFL to act at this time on the Eagles situation and any similar moves.

It is my strong recommendation that the NFL act on its own to establish what it considers reasonable rules instead of leaving the matter to the Congress which, as you know, is quite unpredictable. Senator Gorton and I have discussed collaborating on reintroducing legislation which, we think, would have a good chance of passing the Congress. Last year the Commerce Committee voted out the Gorton bill.

At my request, Senator Thurmond, Chairman of the Judiciary Committee has promised early hearings on the legislation which I propose to introduce.

While in the private practice of law before coming to the Senate, I worked in the antitrust field, and it is my thinking that such an NFL rule would be interpreted by the courts not to violate the antitrust laws. In any event, I do believe there would be strong sentiment in the Congress to remove any doubt that such a rule does not violate the antitrust laws which could be accomplished by a relatively simple amendment to the antitrust laws in the 99th Congress.

I am available to discuss this matter with you further.

Sincerely,

Arlen Specter

AS:jb

P.S. I am asking my secretary to call your secretary to read her this letter this morning so that you will have this information at the earliest possible moment.

APPROPRIATIONS
VETERANS' AFFAIRS

United States Senate
WASHINGTON, D.C. 20510

December 17, 1984

Commissioner Pete Rozelle
The National Football League
410 Park Avenue
New York, NY 10022

Dear Commissioner Rozelle:

I am writing to express my very serious concern over the national problem which has been created by the failure of the National Football League to establish reasonable standards, within the context of the antitrust laws, to regulate the transfer of football franchises.

While the latest chapter has involved major costs for the City of Philadelphia and the Commonwealth of Pennsylvania on concessions to retain the Eagles in Philadelphia, this has been a continuing problem which has resulted in enormous costs in other situations including Baltimore, Maryland; Oakland, California; Minneapolis, Minnesota; and Buffalo, New York. If the NFL had acted to establish such reasonable rules, those costs could have been avoided, with such cities having been able to bargain in a reasonable context with owners of football franchises without the coercive effects of threats to move.

Some have raised a question about the propriety of Congressional action on private property rights of franchise owners. A conclusive answer on the justification of such Congressional action is provided by the antitrust exemption which Congress has given to the pooling of television receipts for professional football. There can be little doubt that the owner of the Philadelphia Eagles would not have considered moving to Phoenix, Arizona, if he were substituting Phoenix's TV receipts for the TV receipts of the Philadelphia market which is the fourth largest in the United States.

As you know from our prior conversations and from Senate bill 2821 which I introduced in the 97th Congress, it is my view that a sports franchise, like ownership of an NFL football team, is different from an ordinary business. If the National Football League does not establish reasonable rules for transfer of franchises, then it is the appropriate prerogative of the Congress in my judgment to balance the interests of fans and cities with the proprietary interests of owners.

This issue has again come to a sharp national focus with the events of the past few days involving the possible move of the Philadelphia Eagles to Phoenix, Arizona. Had the National Football League established standards for franchise moves which would have been applicable to the Philadelphia Eagles' situation, there is no doubt that the Eagles could not have moved from Philadelphia considering the fans' support, profitability of the franchise, and the accommodations of Veterans Stadium which was constructed in 1971.

As I see it, the National Football League, rather than the taxpayers of the City of Philadelphia, should bear the cost of any concessions which have been made to keep the Eagles in Philadelphia because those concessions could not have been extracted under the threat of an Eagles' move if the NFL had fulfilled its duty to establish reasonable standards for such franchise moves.

In asserting the NFL's responsibility for such costs, I put aside for the moment any issue as to whether the Eagles' owner acted properly in the context of his exerting the leverage which he was able to employ given the situation caused by the NFL's inaction. Similarly, for the moment, I put aside any issue as to whether the City of Philadelphia acted properly in making the concessions to the Eagles' owner given the pending NFL lawsuit against the Eagles and the City's potential legal remedies to secure injunctive relief to stop the Eagles' move. Whatever conclusions there may be as to those issues, it seems to me that the ultimate responsibility must be borne by the National Football League which had and has the duty, as I see it, to bear whatever costs may be involved in preventing the Eagles from leaving the City of Philadelphia.

It is my thinking that the Congress must act if the National Football League does not establish appropriate standards on its own to prevent the recurrence of what has happened in Minneapolis, Buffalo, Baltimore, Oakland and Philadelphia.

As a separate issue, it is my preliminary thought that the Congress should reconsider the antitrust exemption to the pooling of television receipts where the City and its taxpayers are compelled to make substantial concessions to retain the Eagles and the City of Philadelphia, its taxpayers and the fans in the region are precluded from a fair share of the economic benefits which the enormous television revenues from the Philadelphia Eagles bring to the National Football League. If the antitrust exemption for pooling of TV revenues did not exist, then it is plain that the Eagles would not have conceivably considered leaving such a lucrative television market for the Phoenix TV area. Those TV revenues are generated by the Eagles' fans in the Philadelphia region and those fans are being asked to pay again through these additional concessions.

Given the many problems currently confronting the Congress, it is my hope that it will not be necessary for the Congress to consider legislation on issues like standards for franchises or revocation of the antitrust exemption on pooling of TV revenues; but such consideration will have to be undertaken if the current chaotic situation continues. My survey shows that 31 states are involved with football, basketball, baseball and soccer franchises so that the majority of the Congress would have good reason to be concerned that their cities and states would be affected by what is happening to the City of Philadelphia and the Commonwealth of Pennsylvania.

Accordingly, I urge that you and the owners act at your meeting tomorrow to see to it that the Eagles remain in Philadelphia without the City of Philadelphia or its taxpayers having to bear any costs to accomplish that result.

So that you will have the text of this letter at the earliest possible time, I am asking my secretary to read this letter to your secretary and further to make it available to the officials of the City of Philadelphia and the Philadelphia Eagles.

Sincerely,

Arlen Specter

AS:jb

THE NATIONAL FOOTBALL LEAGUE

410 PARK AVENUE, NEW YORK, N.Y. 10022 • PLaza 8-1500

December 19, 1984

Hon. Arlen Specter
331 Hart Senate Office Building
Washington, D. C. 20510

Dear Senator Specter:

Thank you for your December 17 letter concerning the Eagles situation.

As to "standards" for evaluating any Eagles move, we delivered to Mr. Tose last Friday evening a memorandum identifying the factors relevant to a team move that were set forth in S. 2505, as reported by the Senate Commerce Committee in June of this year. That memorandum further directed the Eagles, among other things, to "submit to this office a written statement of the club's position with respect to the bearing of these factors on a proposed move to Phoenix, stating specifically why such a move is regarded as justified on these standards. The Eagles should also comment on any other factors you regard as relevant to the League's consideration of this matter."

More broadly, the risks created for leagues and communities by the decision of the Ninth Circuit in the *Raiders* case go quite beyond questions of "standards." The Los Angeles trial court submitted the case to the jury because of the potential for the Raiders to "compete" with the Rams in the Los Angeles area and to protect the opportunity of the Los Angeles Colisuem to "compete" in a stadium market by attracting teams to Los Angeles. The court's entire focus, in short, was on Los Angeles interests, while equivalent Oakland interests were utterly ignored. We have consistently urged that this approach rests on no sensible antitrust principle. However, when concepts of this type are applied, no league decision keeping a team in its existing community will be sustained.

In addition, every effort was made in Los Angeles to block *any* NFL action on the Raiders' move. Thus, when the Los Angeles court first entered its injunction barring League action and allowing the Raiders to move out of Oakland (an injunction that was later reversed), NFL attorneys asked the court to amend the injunction to allow the League to vote on a Raiders' move *on a majority vote basis*. But the Los Angeles court *rejected* this League proposal.

Subsequently, when the Ninth Circuit reversed the preliminary injunction entered by the Los Angeles court, the Circuit's opinion expressly noted that the Raiders' entire effort had been to thwart *any* League evaluation of the Raiders' move, stating:

> "The Raiders *deliberately* refrained from seeking a vote. They attacked Section 4.3 ... without first determining whether that perceived barrier was shadow or substance."

Many other aspects of these team relocation issues cloud the suggestion that sports leagues can simply adopt more "reasonable" rules for dealing with member club transfers and continue to exercise controls over their franchise locations. For example, the National Basketball Association, which is currently litigating the propriety of a unilateral move of its San Diego franchise to Los Angeles, is now confronting the claim that the Ninth Circuit's opinion in the *Raiders* case gives "a member of a sports league ... the unfettered right to move its franchise anywhere at any time, and that *any* restriction of *any* kind on the alleged right of a team unilaterally to select the location of its games" is unlawful. See the enclosed Brief filed by the NBA in the Supreme Court in the *Raiders'* case, pages 4-5. The Los Angeles Stadium interests -- represented by noted plaintiffs' antitrust lawyer Maxwell Blecher, who represented co-plaintiff Los Angeles Coliseum Commission in the *Raiders* case -- are asserting that claim *despite* the NBA's adoption of an elaborate procedural mechanism to ensure express consideration of various objective factors governing team relocation.

Moreover, I am advised that the NBA's new rules do not even take account of "fan loyalty" considerations in the city the team proposes to leave -- presumably because the NBA is uncertain whether the Ninth Circuit's majority opinion, despite its dicta, really permits consideration of such important interests at all.

Give the importance of these matters, we will plan to furnish further information and observations to you. In the meantime, I can assure you that the League has carefully reviewed all of the court opinions on team-move matters, and we intend to continue to adhere to reasonable procedures and practices on such matters.

Sincerely,

Pete

PETE ROZELLE
Commissioner

PR:bd
Enc.

ARLEN SPECTER
PENNSYLVANIA

COMMITTEES
JUDICIARY
APPROPRIATIONS
VETERANS' AFFAIRS

United States Senate
WASHINGTON, D.C. 20510

December 27, 1984

Commissioner Pete Rozelle
The National Football League
410 Park Avenue
New York, NY 10022

Dear Commissioner Rozelle:

I am very much concerned about the future of the Philadelphia Eagles in light of the very heavy financial commitments of the Philadelphia Eagles and owner, Mr. Leonard Tose, as reported by the Philadelphia Inquirer.

According to an extensive account by the Inquirer on Sunday, December 23, 1984, there is an accumulation of debt of $9.9 million at the end of 1981 to $14.1 million at the end of 1982 to approximately $30 million at the present time. The Inquirer further states that the "signature of NFL Commissioner Pete Rozelle appears on letters endorsing the Eagles' loans."

These heavy debts pose a very serious problem for the Eagles' cash flow because of heavy interest payments to say nothing about retirement of debt. In turn, these financial problems may have a serious impact on the Eagles' ability to stay competitive or to produce a winning football team. An owner's ability to pay top salaries and otherwise draw top players establishes a direct relationship between a team's cash position and the talent necessary to have a winning team. The fact that the Raiders had the largest payroll (as reported in the news media) has a direct relationship to their long-standing winning record and two Super Bowl championships since 1981.

Against this background, it seems to me that the Eagles' future could be very grim. If the Eagles do not have the financial resources to field a competitive/winning team, then attendance is likely to fall; and we may be confronted with the situation where the team might be able to establish a case for moving because of lack of sufficient fan support. It seems to me that the National Football League has a signficant responsibility in this matter if the Inquirer reports are accurate that these loans were, in effect, sanctioned by you as Commissioner.

I would very much appreciate your informing me of the role which the NFL plays in approving any loans to NFL team owners where the Club is (or for that matter is not) used for collateral. In the same vein, I would appreciate the details on the loans to the Eagles or Mr. Tose and your projections for repayment of interest and principal. The principal question is: Can the interest be carried and the loans repaid and still have the Eagles able to field a competitive/winning team?

I very much appreciate your letter of December 19, 1984; but, as you know, there are a number of unanswered questions remaining from my letters of December 13 and 17. I continue to be concerned about concessions that have been made by the City of Philadelphia, and I believe those costs should be borne by the National Football League because the City would not have had to have made those concessions if there had not been a threat of an Eagles' move which would have been precluded had the NFL fulfilled its duty to establish reasonable standards for such franchise moves.

One of the concessions, the deferral of the team's annual stadium rental for 10 years, is especially problemsome because it adds to the projected debt. According to the Inquirer article, the 1983 rental was $817,000. On a ten-year projection, considering interest, that debt would exceed $10 million. Aside from the fact that the City should not bear that expense, it is most unwise to structure an additional factor which adds to the Eagles' debt.

In the context of our prior correspondence and conversations, I would appreciate your making available to me at the earliest moment the figures on what the Eagles' share would have been from its own TV market and its post-season play from TV if the revenue sharing on TV receipts were not in effect, as sanctioned by the antitrust exemption.

After the first of the year, I look forward to the opportunity to meet with you in person concerning these and other matters of mutual interest.

My best to you and yours for the New Year.

Sincerely,

Arlen Specter

AS:jb

THE NATIONAL FOOTBALL LEAGUE

410 PARK AVENUE. NEW YORK, N.Y. 10022 • PLaza 8-1500

7 January 1985

Honorable Arlen Specter
Room 331
Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Specter:

This refers to your letters of December 13 and 17 concerning antitrust law aspects of the movement of professional sports teams, and supplements my December 19 letter to you. I am separately responding to yours of December 27 concerning Eagles financial matters.

In your December 17 letter, you seek to attribute the "national problem" confronting the NFL, its fans, and its franchise cities to a supposed failure of the NFL to establish "reasonable" standards for regulating the transfer of NFL member clubs. Similar suggestions have originated with the Los Angeles Raiders, who have engaged in a massive effort to divorce themselves from any responsibility for the unstable conditions in professional sports that have followed their unilateral desertion of Oakland and the decision of the Ninth Circuit Court of Appeals in the case involving the Raiders' relocation to Los Angeles.

The responsibility for the deteriorating stability of professional sports franchises does not, however, rest with the NFL as a league, and the solution to the problem is not nearly as simple as proposals for "standards" would imply. The current problem does *not* spring from any failure of the NFL to adopt "reasonable" rules for club relocations. The problem exists because of the pervasive antitrust confusions generated by the court rulings in the *Raiders*' litigation.

To begin with, the rulings in the *Raiders*' case rejected settled case law. Until the courts in that case held that NFL team location commitments were subject to Section 1 of the Sherman Act as conspiracies, the accepted understanding was that such commitments constituted the lawful conduct of a single enterprise. See *San Francisco Seals v. National Hockey League*, 379 F. Supp. 966, 969-700 (C.D. Cal. 1974); and J. Weistart & C. Lowell, *The Law of Sports*, § 5.11, at 698-700 (1979). The Department of Justice itself, through the Antitrust Division, had expressed the view that league decisions on the location of teams may not even present "an antitrust issue" and, in any event, "are not terribly amenable to antitrust resolution . . . ." House Select Committee on Professional Sports, *Inquiry into Professional Sports*, 94th Cong., 2d Sess. 296, 301 (1976).

In addition, the NFL team location agreements at issue in the *Raiders*' case were the least restrictive then in effect in professional sports. Within this framework, the NFL *did* evaluate many objective factors in considering the Raiders' proposed move -- the same types of factors anyone would review in evaluating the justifications for a proposed team move. The League had not attempted to billboard such factors in advance because such decisions necessarily involve major elements of business judgment and because no League member had formally proposed a move to a new home territory for some 20 years.

It is also difficult to formulate any meaningful standards, particularly relating to municipal and fan interests, that would have justified a Raiders' transfer from Oakland. At the time of their announced transfer, the Raiders ranked third among all NFL clubs in total gate receipts; they had had more than a decade of consecutive sellouts of all home games in Oakland -- preseason and regular season; their ticket prices were among the highest in the NFL; and the Raiders were among the best supported and most successful teams of the NFL. Their situation was, in short, remarkably similar to that of the Redskins in Washington.

Moreover, the Raiders had been assisted by their league -- then the American Football League -- in obtaining a new Oakland stadium in the mid-1960's, with the AFL Commissioner committing to the Oakland authorities that, if the City would finance a new stadium, the League would preserve the Raiders in Oakland so long as it was economically realistic to do so. Unpaid public debt service on that stadium extended for some 25 more years. Further, when the Raiders had experienced financial problems in Oakland in the early 1960's, the other AFL clubs had supported the franchise financially as league partners, including through waivers of required payments by the Raiders to visiting teams to enable the Oakland club to improve its financial position. One AFL owner had even made a direct financial contribution to the operations of the Raiders' franchise.

If factors such as these cannot be considered meaningful in assessing a club's relocation proposal, then pre-articulated standards directed to such issues will be divorced from reality. Moreover, no sports league can be assured of freedom from extraordinary antitrust liabilities should it attempt to limit team moves based on "standards" of any character.

The confusion generated by the split 2-1 decision of the Ninth Circuit panel in the Raiders' case, and by the District Court's rulings in that case, is evident. Even the majority opinion states that sports leagues do not readily fit into the antitrust context, and it refers to the issues as troublesome and difficult. 726 F.2d at 1391, 1401. Moreover, the dissenting judge, who would have held the League's refusal to approve a Raiders' move lawful as a matter of law, stated that the majority's ruling effectively means that the NFL "may not enforce any collective decision of its member clubs over the dissent of a club member" and "is tantamount to ruling that the NFL structure is itself per se invalid under the Sherman Act § 1 . . . ." 726 F.2d at 1407-08. The dissenting judge did not, in short, read the majority opinion as permitting leagues to restore team stability or control over team movement simply through "standards" or procedural changes in their operations.

Your December 13 letter suggests that the NFL's rules should provide for consideration of factors such as fan support in the existing community, the condition of the existing stadium, and the like. However, the League's reliance on precisely such factors was entirely unavailing in the Raiders' case -- where a Los Angeles jury was essentially permitted to assess Oakland's interest in retaining the Raiders, and the Raiders' counsel characterized Oakland for the jury as the "murder capital of the United States." Nonetheless, as noted in my December 19 letter to you, we will require the Eagles to demonstrate why any proposed move from Philadelphia may be justified on the standards set forth in S. 2505, as reported last June by the Senate Commerce Committee. In addition, I have implemented policies and procedures within the League making such a requirement applicable to any proposed team relocation, as stated in the enclosed memorandum of December 21, 1984, sent to all NFL clubs.

In this context, the suggestion in your December 17 letter that the 27 NFL member clubs other than the Eagles should pay the costs of recent financial commitments made by the City of Philadelphia to the Eagles is, in my judgment, unusual, unfair, and unwarranted -- for a number of reasons in addition to those suggested above.

To begin with, neither the NFL itself nor any League member other than the Eagles participated in negotiation of the arrangements between the City and the Eagles for continued Eagles' operations in Philadelphia. The Eagles, with knowledge of the court rulings in the Raiders' case, apparently intended to take the position that they would neither inform the League of any plans to relocate to Phoenix nor seek League approval for any such relocation. In addition, by filing suit against the Eagles on December 14, the League itself promptly acted to assert that any unilateral Eagles relocation from Philadelphia would be unauthorized and a breach of the Eagles' NFL franchise agreement. Thereafter, the City continued to negotiate with the Eagles and agreed upon the arrangements that you now assert should be a League-wide financial responsibility.

Second, I do not see the equity -- within the NFL or with respect to other cities -- in your suggestion that other NFL teams should directly bear the costs of the arrangements negotiated in Philadelphia, over which neither the League nor the other NFL members had control. Why, for example, should the Pittsburgh Steelers bear the costs of Eagles' stadium arrangements in Philadelphia, particularly when the Steelers operate in a smaller stadium in Pittsburgh, with lesser stadium revenues than may be generated in Philadelphia, and with more onerous lease commitments than exist for the Eagles in Philadelphia? And why should any number of other NFL clubs operating in smaller stadiums, or smaller markets, or in stadiums that they themselves must own and operate -- such as the Cincinnati Bengals, Green Bay Packers, New England Patriots, or St. Louis Cardinals -- directly bear the costs of lease and stadium arrangements in Philadelphia?

Third, the costs incurred in the City of Philadelphia's recent agreement with the Eagles are a direct result of the rulings in the Raiders' litigation concerning bidding among stadiums for NFL teams as tenants. A premise of those court rulings was that individual NFL teams must be permitted to force stadiums to bid against each other for NFL team tenants. The majority of the Ninth Circuit panel thus noted that the Raiders' move from Oakland to Los Angeles produced "competition between the L.A. Coliseum and the Oakland Coliseum for the tenancy of the Raiders" (726 F.2d at 1394), and its ruling affirmed the jury's apparent conclusion that bidding by cities and stadiums for NFL tenants was warranted. Any concessions made by the City of Philadelphia to the Eagles represent, in these terms, the normal costs of the "auction bidding" that will inevitably be produced by these aspects of the Ninth Circuit majority's ruling.

When the NFL's effort to continue the Raiders' operations in Oakland was condemned as illegal by a Los Angeles court and jury, I sharply criticized the decision on the basis that it would license owners of professional sports franchise to "auction" their teams to the highest municipal or stadium bidder. To date, however, the courts in the Raiders' case have regarded such concerns either as irrelevant or as required by their perceptions of antitrust law.

Finally, the suggestion that the NFL should pay the costs of arrangements negotiated by the Eagles and the City of Philadelphia is quite ironic in view of the Ninth Circuit's treatment of the NFL member clubs as independent entities and business competitors. Business competitors do not pay or share the operating costs of their competitors. To the contrary, the business objective of competitors is to defeat the position of each other competitor in the marketplace and to secure cost and profit advantages over such competitors. If, as the Ninth Circuit ruled, the NFL members are to be treated as business competitors rather than as a common business enterprise or partnership, then the 27 clubs cannot be expected to bear the costs of agreements negotiated by an individual club acting to pursue its own interests in a manner blessed by the Raiders' court rulings.

In closing, I should reemphasize that the NFL takes sharp issue with the coherence -- much less the propriety -- of the legal standards applied in the Raiders' case. Those rulings create both new confusions in the law and extraordinary risks for sports leagues and their members who seek to preserve franchise stability. In directing suit to be filed against the Eagles, it was my judgment that federal courts other than those in the Ninth Circuit might well decline to treat the Raiders' rulings as persuasive precedents and instead recognize that the NFL team location agreements do not pose any realistic antitrust issues.

In that light, the decision of the NFL clubs to back the League's suit in Philadelphia should be recognized for what it is: a forthright step to preserve franchise stability and protect existing League-community ties. I therefore do not believe there is any basis for forcing the League's members to assume responsibility for the actions of either the Eagles or the City of Philadelphia in their efforts to reach a solution.

I trust that these observations are responsive to all of the items raised in your letters of December 13 and 17. I look forward, as you have suggested, to discussing these matters with you.

Sincerely,

Pete Rozelle

PETE ROZELLE
Commissioner

Enclosure

ARLEN SPECTER
PENNSYLVANIA

COMMITTEES
JUDICIARY
APPROPRIATIONS
VETERANS AFFAIRS

United States Senate
WASHINGTON, DC 20510

JUDICIARY COMMITTEE
1985 FEB 26 AM 10: 2

February 25, 1985

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Strom:

I am herewith enclosing a memorandum which contains my answers to your inquiries on S. 172.

My best.

Sincerely,

Arlen Specter

AS:jb

Enclosure

By Hand

QUESTIONS FOR SENATOR SPECTER

1. YOUR BILL DIFFERS IN SEVERAL RESPECTS FROM THE BILL WHICH WAS THE SUBJECT OF HEARINGS IN THE 97TH CONGRESS. COULD YOU PLEASE DESCRIBE THOSE CHANGES AND PROVIDE THE COMMITTEE WITH THE RATIONALE FOR EACH.

2. IN ATTEMPTING TO ADDRESS THE PROBLEMS THAT YOU HAVE DESCRIBED, WE MUST TRY TO ACHIEVE AN APPROPRIATE BALANCE BETWEEN THE INTEREST OF LOCAL COMMUNITIES AND AVOIDING UNDUE FEDERAL INTRUSION INTO STATE MATTERS. ARE YOU SATISFIED THAT LOCAL COMMUNITIES AND PRIVATE INTERESTED PARTIES HAVE DONE ENOUGH ON THEIR OWN INITIATIVE TO AVOID PROBLEMS IN THIS AREA, PARTICULARLY IN TERMS OF THE CONTRACTS THEY NEGOTIATE WITH SPORTS FRANCHISE?

SENATOR SPECTER'S RESPONSES TO QUESTIONS FROM SENATOR THURMOND

1. S. 172 differs from S. 2821, which I introduced in the 97th Congress, in several important respects.

(A) The three criteria in Section 4 of the bills have been redrafted to eliminate ambiguous language. Terms such as "material significance" (Sec. 4.1), "properly and competitively" (Sec. 4.2), and "financial viability" (Sec. 4.3) have been replaced with specific references to profitability. It was my sense, based upon the hearings before the Committee on August 16, September 16, 20, and 29, 1982, that the now-replaced terms used in S. 2821 left too much room for interpretation and thus gave inadequate guidance to leagues and owners as to the circumstances that would render a relocation unlawful.

(B) Section 4.3 now provides that, in computing the net losses of a team, no personal obligations or losses of the owner or unreasonable compensation to the owner or his family members may be included. This language was added to ensure that an owner's personal financial dealings do not color the judgment as to whether a team is profitable. The controversy surrounding the large personal debts of Leonard Tose, owner of the Philadelphia Eagles, illustrates the need for such a provision.

(C) Section 4 now provides for the local government authority, upon 120 days notice, to determine whether the criteria for relocation have been satisfied. This provision is necessary to permit a local government to determine whether to remedy any of the circumstances described in Section 4.1 and 4.2, and to enable a government to initiate a civil action before a team has relocated. The need for such a notice provision is illustrated by the relocation of the Baltimore Colts, which departed Baltimore without notice in the middle of the night.

(D) Section 4 also now provides that, if the owner intends to relocate the team as part of a sale and the criteria for relocation have been satisfied, the local government may exercise or delegate a right of first refusal to purchase and retain the team. This provision does not enable a local government to deprive an owner of the ownership of a team. Rather, it merely gives the government the right to substantially match the best purchase price offered to an owner for a team the owner already has determined to sell. The rationale for this provision is that, if an owner desires to liquidate his asset and give up any proprietary interest in his team, it is appropriate to accommodate both the owner's financial interest and the community's interest in retaining the team in its present location.

(E) Section 6 now makes clear that a local government may seek to have a relocation enjoined before it occurs; S. 2821 empowered a government to seek damages and "equitable relief" if a team had relocated. I believe that local governments must be able to take affirmative steps to prevent improper relocations before they occur.

(F) Section 8 defines "municipality" rather than "metropolitan area," because the former term has been substituted for the latter throughout the bill. The change was made in order to bring within the scope of the bill proposed relocations from one governmental jurisdiction to another within a single metropolitan area, as S. 2821 defined that term.

2. I am satisfied that local communities and private interested parties have done all they can to prevent professional sports franchise relocaton. The present problems exist not because cities have made insufficient efforts or bargained badly, but rather because franchises are scarce, the legal climate is confusing, and the National Football League has failed to establish league standards. The NFL, in turn, bases its unwillingness to establish standards on its uncertainties about the antitrust laws. In sum, there is a national problem, beyond the ability of cities or private parties to resolve; in these circumstances, I believe that a legislative solution is necessary and appropriate.

Cities like Philadelphia find themselves in a squeeze between team owners, cities trying to attract teams, and loyal fans anxious for a home team not to relocate. The combination of these forces compels cities to agree to onerous concessions -- like Philadelphia -- or to lose the franchise -- like Baltimore. Either course causes cities grave financial injury.

I introduced S. 172, in part, to eliminate the unfair choice that Philadelphia and Baltimore have been forced to make, and that other cities -- St. Louis and New Orleans, for example -- are facing even as we begin consideration of my bill. I do not believe that cities and interested private parties can satisfactorily resolve that dilemma on their own initiative.

Senator SPECTER. I thank the Chair.

The CHAIRMAN. The distinguished Senator from Ohio, Mr. Metzenbaum.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator METZENBAUM. Well, Mr. Chairman, I feel a bit troubled as I sit here today participating in the first of what may be a series of hearings concerning professional sports. And I note that the Commerce Committee is also spending a great deal of time on this issue.

I just left the Budget Committee to come over here. The Nation faces serious problems with the deficit approaching $200 billion. We are in the middle of an arms race, the possible confrontation in the whole nuclear area. Unemployment has gone up, and the U.S. Senate is here debating sports franchises. Why?

We are a Nation committed to the free enterprise system. We believe that the market will usually be the best way to allocate goods and services. And as we have learned in studying various transportation industries, such as airlines and trucking, Government regulation only leads to more regulation.

And that is what we have here. What we have are some of the most successful proponents of the free enterprise system, some of the most successful business people in the country, some of the most ardent supporters of the philosophies of this administration, coming here to the Congress and saying, Congress, get in and regulate it; you tell us what or how.

It is like the tax laws. Everybody thinks we ought to do something about making the tax laws more equitable, provided that we tax the other guy, not ourselves. Everybody thinks that we ought to keep the Government out of business, except when the Government can step in and help in a particular situation. And I have seen other situations where my colleagues have stood for a particular posture until there was a matter that more directly related to their own State or community.

Now, as we look at this situation, we look at the fact that, in 1920, the Supreme Court held that baseball was not interstate commerce, and thus not subject to the Sherman Antitrust Act. And although the Court refused to extend this ridiculous doctrine to football, Congress allowed the National and American Football Leagues to merge in 1966, thus creating a monopoly in that sport as well, at least up until the advent of the USFL.

Thus, we have been faced with Congress, with all of the Nation's problems, debating really important issues, such as when home games can be blacked out on television, when teams can move, whether expansion should be required.

And having created and permitted the monopoly, inevitably Congress is called upon to deal with its evils. I have some very strong Republican philosophy to support, and I think it is the right philosophy.

Let us get the Congress out of the business of regulating the football industry. The antitrust laws recognize now that joint ventures, such as sports leagues, need to cooperate on a number of matters in order to succeed; especially if there were leagues that competed for players, for network contracts, and for fan support, even greater latitude would be permitted under existing antitrust laws.

I say, let the leagues fight it out. Repeal the baseball exemption; require the National and American Leagues to really compete with each other. Repeal the 1966 merger legislation and let the NFL, AFL and the USFL fight it out. Then no NFL team would dare leave a major market, for an AFL or a USFL team would quickly move in if it did.

And Phoenix or Birmingham or Washington, DC, would not have to bid for franchises. Instead, competing leagues would be begging to be the new entrant in these desirable markets.

I do not kid myself. That is not going to happen; that is not the road we are going to go. I am not going to introduce any legislation, not because I do not think that it should pass, but because I am a realist.

But the fans, who are the most important factor in this, would benefit from the real competition that such a step would insure. By the way, I understand that a limited agreement between competing leagues to permit a World Series or a Super Bowl would not now be banned by the antitrust laws.

[Senator Specter assumed the chair.]

Senator **Metzenbaum**. But I think the real benefit as far as I am concerned will be here on Capitol Hill if we were to move in that direction. National legislators could get back to unimportant issues, such as the economy, unimportant issues such as jobs, unimportant issues such as war and peace.

We can apply our regulatory skills to dangerous toxic wastes and hazardous consumer products. We could even then end the unseemly battles that pit friendly Senators against each other, defending their home communities as they are exploited by sports monopolies.

In an era with so much rhetoric about deregulation, free enterprise, let industry do it on its own, keep the Government out of the business sector, let us bring that same philosophy to the arena of football.

But I recognize that philosophy is good as long as it does not step on our toes, and this packed room this morning indicates to me that many of you who have seen fit in the voting booth to indicate your strong support for free enterprise and letting the business community do it their own way now think that Congress should be in there doing it your way because it does have some special advantages to your community, to your business, or to you.

I am not a supporter of either of these legislative proposals and I want Congress to get down and do the work we ought to be doing instead of worrying about this particular issue.

Thank you, Mr. Chairman.

Senator **Specter**. The distinguished Senator from Arizona, Senator DeConcini.

Senator **DeConcini**. Mr. Chairman, thank you very much. Thank you, Senator Metzenbaum. I had you as doubtful in support of my bill and Senator Specter's bill.

Senator **Specter**. Will that hurt you or help you, Senator DeConcini?

Senator **DeConcini**. I am not too sure. [Laughter.]

Senator **Metzenbaum**. You have got a long way to go, both of you. [Laughter.]

OPENING STATEMENT OF SENATOR DENNIS DeCONCINI

Senator **DeConcini**. I would much rather have the distinguished Senator from Ohio strongly endorsing the bill.

Mr. Chairman, today we meet to receive testimony from several distinguished witnesses concerning S. 298, which I introduced, and S. 172, introduced by yourself. Both of these bills create specific antitrust exemptions for professional sports leagues.

The problems faced by professional sports leagues have also been addressed by two bills which have been referred to the Commerce Committee. It would be my hope that if the Commerce Committee reports legislation dealing with the antitrust problems of professional sports, the Judiciary Committee would be able to consider that part of the bill over which we have jurisdiction prior to its consideration by the Senate, and I have so suggested and advised Chairman Thurmond of my desire that he will attempt to have that occur.

Mr. Chairman, my approach to the problem that all of these bills address is different from some of my colleagues. Instead of putting the Government into the affairs of these private business enterprises, I propose that we take Government out.

Instead of formulating a Government solution to sports problems, we should step back and let the businessmen involved solve these problems. And instead of Government regulating sports, we should create a legal climate in which sports can regulate themselves.

Professional sports stadiums and arenas subsidized or built entirely by taxpayers' funds have become a central feature of many of our cities' landscapes. Robert F. Kennedy Stadium here in Washington is a prime example. It was built with public funds issue guaranteed by the U.S. Treasury.

Many other communities have publicly sponsored stadiums. They include, just to mention a few, the New Orleans Superdome, the Michigan Silverdome, the Seattle Kingdome, all built with public bonds or subsidized with taxpayers' funds.

Communities across the Nation are concerned about their relationship with professional sports teams and are anxious to insure that communities' interests are adequately protected. The distinguished Senator from Pennsylvania, Mr. Specter, and I share these concerns. We differ, however, over the means to achieve this agreed-upon goal.

The legislation I sponsored differs from S. 172 in three specific areas. First, and perhaps most important, it is the simplicity of my legislation, S. 298, which allows leagues to collectively decide to keep teams in their existing communities.

Although S. 172 protects a community that has financial and professional football stadiums from an owner who might arbitrarily abandon that community, the bill goes too far in regulating professional football. It creates arbitrary economic criteria which may, in the uncertain future, be inapplicable to the specific solution needed.

A better solution is to leave to the business men and women of the future the ability to evaluate and solve these specific solutions and situations.

Second, the legislation also addresses revenue sharing, an area untouched in S. 172. We do not serve the public interest if we allow sports teams to gravitate to the big metropolitan markets where owners might reap financial bonanzas. Leagues and teams should have incentives to locate teams throughout the Nation. Revenue sharing provides such an incentive. My bill confirms the right of sports leagues to provide for the division of leagues or club revenues in a manner that tends to reduce financial disparities among the clubs.

Finally, my legislation differs from S. 172 in its breadth. S. 172 only addresses professional football. The problem we confront today is equally applicable to other professional sports.

For example, the National Hockey League is currently facing the expense of litigation and the risk of treble damages for opposing the move of a team from St. Louis to Saskatchewan. My bill would have insulated the National Hockey League from antitrust liability, and therefore would have allowed the league to protect the interests of the St. Louis community.

We are currently confronted with a situation in which judges are making decisions that should be left to the judgment of team owners. A judge has decided whether or not the National Football League should play its games in Oakland or Los Angeles. Another judge is deciding whether the National Basketball Association should have two teams in Los Angeles or one in Los Angeles and one in San Diego. Still another judge is faced with the question about the National Hockey League which I just mentioned.

The leagues involved should be making these decisions. The leagues have the experience and the expertise and the leagues must live with the consequences of such decisions. I believe that bringing order to the jumbled mess that presently exists would benefit everyone.

Cities that have sports teams, such as Phoenix, AZ, will benefit because decisions on franchise locations would be based on sound, long-term business criteria. Cities that want professional teams, such as Phoenix, AZ, would benefit because legislation along the lines I have proposed would create a legal climate in which leagues could follow their best business judgment, not judgment imposed by congressional mandate.

Earlier this week, Commissioner Rozelle testified that expansion of the NFL will occur only after the instability induced by the *Raiders* decision is corrected, and I must say rightfully so. I would be very reluctant as counsel to the NFL to advise that they proceed just from the dicta that is cited in the *Raiders* case.

My bill provides that stability without unnecessarily inserting the Government into professional sports and into their board rooms. I have no doubt that when the National Football League believes it can expand, Phoenix will be at the top of the list on expansion teams. We are the ninth largest city in the United States today.

I want to make sure that when Phoenix gets a football team, they will be able to keep it. I want to make sure that the Phoenix Suns, a national basketball team, stays in Phoenix. I am certain that the best way to protect the interests of fans and communities is to let the collective judgment of professional sports franchise owners determine the location of franchises and the distribution of team income.

Both the distinguished Senator from Pennsylvania and I are driving for the same goal. S. 172, however, unnecessarily involves the Government in a regulatory role far more than what is necessary, in my judgment. It ignores the problems that exist in other professional sports leagues.

Thank you, Mr. Chairman.

Senator SPECTER. Thank you very much, Senator DeConcini.

One word of repetition because Senator Metzenbaum had to be present at the Budget Committee hearings. The opening comments that I made address the issue on your mind, Senator Metzenbaum, about why the U.S. Senate should be considering a sports bill, given the other problems.

And I addressed that in terms of the $30 million in concessions which the city of Philadelphia has been called upon to make to the Philadelphia Eagles, and the tremendous number of jobs involved in a State like mine, which has the Steelers and the Eagles and the Pirates and the Phillies and the 76'ers and Flyers and Penguins, et cetera.

And my legislation was introduced when it was a Raiders issue in 1982, although I am not unaware that principles sometimes become blurry when local interests are affected, and that might be present were either the Browns or the Bengals involved.

And it is amazing how much additional support has been engendered in some States with the pending potential moves of the St. Louis Cardinals and New Orleans Saints. And the Miami Dolphins are not secure, nor are the Washington Redskins, given the value of professional football teams around this country, so that it is a matter where there are 31 States involved in teams with professional sports which have a very enormous impact on their States' economy and jobs.

I would like now to call our first witness, a distinguished American, Mr. Howard Cosell, who has achieved great acclaim as a sports commentator, but has made major contributions beyond.

As a commentator, he was Broadcaster of the Year in 1974, as awarded by the International Radio and Television Society. Since ABC's Monday Night Football had its premiere in 1970, Mr. Cosell has been an expert commentator and has twice won Emmy Awards.

He has a long list of credentials, and among the most important and the ones he prizes are his appearances before congressional committees—the House committee back in 1972; he was a witness in 1982 before this committee on the Raider issue.

And without objection, we will put into the record the "Sportsbeat" show of December 15, 1984, which was an extraordinary chronolog of, as the facts show, unfairness to the sporting public and to a variety of cities by moves made by professional athletic teams, and I know these are matters that Mr. Cosell will address and amplify upon.

[The following was received for the record:]

RADIO TV REPORTS, INC.

41 EAST 42nd STREET, NEW YORK, N.Y. 10017, (212) 599-5500

FOR	ABC-TV SPORTS			
PROGRAM	SPORTSBEAT		STATION	WABC-TV & THE ABC TV NETWORK
DATE	DECEMBER 15, 1984	4:30 PM	CITY	NEW YORK, NY

FULL TEXT

ANNOUNCER: This is ABC Sportsbeat. The City of Philadelphia is in shock as the Eagles appear headed for Phoenix. Another chapter in the history of franchise football. What's the real story? Is it an unstoppable time? Is federal legislation the answer? Philadelphia Mayor Wilson Goode and Senator Arlen Specter speak out today on ABC Sportsbeat.

HOWARD COSELL: The big news this week: the Philadelphia Eagles of the National Football League may be headed for Phoenix, Arizona. One of the NFL's most historic franchises, the Eagles received support through thick and thin. And the team was not, repeat not, losing money. However, owner Leonard Tose(?) reported to have a personal indebtedness in the neighborhood of $40 million. Tose is reported to have found buyers in Phoenix.

An anguished Philadelphia Mayor, W. Wilson Goode, has been trying desperately to get local financing to match the Phoenix offer. Pennsylvania's United States Senator, Arlen Specter, angrily promised to push for legislation to prevent yet another team from deserting yet another city.

And late yesterday, in a surprise action, the National Football League filed suit in U.S. District Court in Philadelphia, seeking to have the court enforce the Eagles' long term contract to continue to operate in Philadelphia as it has for the past fifty-one years. Mayor Goode and Senator Specter

-are in the studios of ABC affiliate, WPVI, in Philadelphia. We'll be talking at length with them later in this program.

I personally spoke at length with NFL Commissioner, Pete Rosell, yesterday. Invited him to join Mayor Goode and Senator Specter here today. He declined -- understandably -- saying that he would very much like to, but on advice of counsel, his own common sense, and his clear obligation to the owners of his league, he could not conscionably do so until he has met with all of those owners on Tuesday coming up.

But first, this reported move by the Eagles, only the latest chapter in a continuing saga of carpetbagging sports franchises. Holding cities hostage for greater personal gain, either by threat of removal or actual removal. It's a subject that Sportsbeat has documented thoroughly over the past three years. And to fully understand its implications, it is imperative that we, once again, explore the very beginnings of this sports phenomenon.

The genesis of our story is baseball, rather than football. Long before pro football grew in size and stature, baseball had a stranglehold on the psyche of America. So much so, that in 1922, the Supreme Court granted professional baseball exemption from the Sherman Anti-Trust Law. In those days, baseball was considered preeminently a sport, rather than a business. A rude awakening in 1957, when the Brooklyn Dodgers, long the most successful National League franchise, deserted Brooklyn for the more lucrative environs of Chavez Ravine in Los Angeles. And land, lots of land. 295 acres and attendant oil rights for owner, Walter O'Malley. This was a land grab, pure and simple. The great baseball exodus had begun.

There was no recourse for the injured cities. The sport was protected by its anti-trust exemption. In addition to the Dodgers, the New York Giants to San Francisco; the Washington Senators to Minnesota; the Milwaukee Braves to Atlanta; the Kansas City Athletics to Oakland; the Seattle Pilots to Milwaukee. When the Washington Senators became the Texas Rangers in '71, baseball's Chinese checkered game ended.

But pro football, which had become a real power following the merger of the AFL and NFL in '66, picked up where baseball had left off. The football Giants of New York were lured away, not by land, but primarily by the promise of luxury boxes like these in Texas Stadium. They left for a $68 million stadium and a new tax jurisdiction. The New Jersey Meadowlands, where their luxury loges bring in over a million dollars in revenue each year. And though the loges are publicly financed, all the money goes to the Giants owners, not even dividable with the visiting team.

Then, a brilliant businessman, the late Darryl Rosenblum, realized he could combine the two, getting both land and loges. He moved his L.A. Rams to the neighboring tax jurisdiction of Anaheim. In return, an option to buy and develop ninety-five acres of choice real estate at a preferred rate; a hundred ten plus boxes, worth over two million annually; a bargain rental agreement; lucrative parking facilities; and a concession deal.

Next, owners like Bob Hersey of the Baltimore Colts realized they didn't have to leave to get what they wanted, just threaten to. Hersey took his show on the road; began touring stadiums, like the Gator Bowl in Jacksonville. Area residents gave him a warm reception. But Hersey was more interested in putting the heat on his home City of Baltimore.

BOB HERSEY: Now I tell the people of Baltimore, like I told them three months ago, get off your duffs and have the official do something, like these people are doing here.

COSELL: If his demands for renovations and luxury boxes were not met by Baltimore, then there might be the Jacksonville Colts, or the Memphis Colts, or even the L.A. Colts. Result: a new Baltimore offer for a long term lease; $23 million in renovations. But Hersey held out for a short term deal, and thus kept his options open.

And, in Minnesota, another example. Vikings owner, Max Winter, tired of watching his football team labor in the snow and cold of Bloomington, launched a campaign for a domed stadium. Once again, ominous headlines set the stage. Named as possible alternative sites, Birmingham, Memphis, New York, Montreal, even Mexico City, Los Angeles and Phoenix, too. The panic was on. It was dome time or doom time. Dome won out over doom. The Vikes moved to beautiful, downtown Minneapolis, and joined the baseball Twins in a $55 million, tax supported Metrodome. A hundred fifteen luxury boxes there, could bring the Vikes another $3 million each year.

Then, after that, came the Buffalo caper. First, Bills' owner, Ralph Wilson, got the city to enlarge War Memorial Stadium on threat of departure. He then pressed for a new and a bigger stadium, issued this ultimatum.

RALPH WILSON: If Buffalo doesn't get a new stadium, it will force the move of the Buffalo Bills.

COSELL: County officials got the message, contracted for a multi-purpose, domed arena. No dice, said Wilson. He wanted his own football stadium in suburban Orchard Park. Erie County capitulated. Result: Wilson got his lavish new stadium. The taxpayers' bill: $41 million for Ritz Stadium; $1.5 million for renovating old War Memorial; $90 million in potential damages, resulting from the domed contract the County was forced to break.

But, there are more twists to this story. And we'll have them when we return.

(COMMERCIALS)

COSELL: In 1980, a case that would send shock waves through the NFL. After negotiations with Oakland broke down, Al Davis wanted to take his Raiders to L.A. The NFL said no. Davis sued. Two courts, Federal District Court, Ninth Circuit Court of Appeals, ultimately agreed with Davis. U.S. Supreme Court refused to even hear the case. The NFL was in violation of the anti-trust laws for trying to block his team's move to L.A.

The key issue in the case: Rule 4.3 of the NFL Constitution. That requires three-quarters of the owners to approve an attempt to move a team to another city, more than seventy-five miles away. This is the rule that was found in violation of the existing anti-trust laws of this nation.

Instead of amending its rules to conform with the law, as did the NBA, the NFL adopted an ostrich-like position. Said it was now powerless to prevent franchise removals. Wrong. Wrong. Absolutely wrong. It could change Rule 4.3 to a simple majority vote. It could establish reasonable criteria governing franchise transfers. One example: economic loss over a continuing period of time, say three years. Those two steps would enable the National Football League to conform with, what is known as, the rule of reason in anti-trust law.

Instead, the NFL has persisted in going to the Congress, trying to obtain legislation that would grant it anti-trust exemption. Such an exemption would give the NFL sole power to decide whether a team may move.

MAN: We have a situation where the Raiders are going to play this year, apparently, in Los Angeles. So, we were told to come back when we had a problem. We feel we have a big problem. We hope the Congress will recognize it and clarify it.

COSELL: So far, Congress has rebuffed the League in all its attempts. Taking advantage of the NFL's refusal to amend its rules, two teams promptly deserted their cities. First, the Jets left New York; crossed the Hudson into New Jersey, playing at the Meadowlands. Then, Colts owner, Bob Hersey, made good on his years of threatening Baltimore. He wooed Indianapolis; found Mayor William Hudnut eager to take another city's team.

WILLIAM HUDNUT: If he feels that he's in a distressed situation in Baltimore and he, in fact, wants to move his franchise, I'm not gonna sit on the sidelines of history and watch the river flow by and eat bonbons. I'm gonna get in there and compete.

COSELL: Just one week after Mayor Hudnut made that statement, Hersey sneaked out of Baltimore under cover of night. Slipped away to Indianapolis.

MAYOR WILLIAM SCHAEFER: All of the memorabilia of the old Colts are gone. All. All taken out of that building that --and dumped in a van. Just dumped in. You know. Young -- his shoes, five-and-a-half, little, tiny, itty-bitty shoes that he had, and he was a great football player. Unitas' jersey. All those things that mean nothing to any other city but us. Wouldn't you think -- just the final humiliation to the City. We'll take all of it and we'll dump it, and we'll put it on a van, and we'll take it away at midnight and two o'clock in the morning.

COSELL: Now, the Eagles may be headed to Phoenix. Fifty-one years in Philadelphia. All those memories. Remember, Norman Rockland, the Dutchman, passing to Tommy McDonald, beating the pack for the 1960 title. Can anyone ever forget big, number 60? Chuck Bednara, football's last sixty minute man. After that, there were long, lean years. And then, the Eagles would come back, with the likes of that man, Wilbert Montgomery, under the leadership of Dick Vermile. Beat the Cowboys. Dudley '80 Superbowl, where they did, indeed, lose to the Raiders. The Eagles slipped again in the last few seasons.

But they're part of the fabric of Philadelphia. And Mayor Goode has been trying mightily to keep them there. Tuesday night past, he met with Leonard Tose at the Eagles' owner's home. Came away thinking he had a fifty-fifty chance to save them for the Quaker city. When we come back, we'll talk with Mayor Wilson Goode, who is in our Philadelphia studios, along with Senator Arlen Specter of Pennsylvania.

(COMMERCIALS)

COSELL: At WPVI, Philadelphia, you're looking at Mayor W. Wilson Goode of Philadelphia to the right of your screen. To the left, Arlen Specter, Senator from the City of Philadelphia itself, past District Attorney there. Let's begin immediately with Mayor Goode. Mr. Mayor, at this point in time, exactly where do you stand in your efforts to keep the Eagles in Philadelphia?

MAYOR WILSON GOODE: Well last evening, I met with Leonard Tose. And he told me that he wanted very much to keep the team here. We talked about various ways that could be done. And we're agreed to wait until some time today, to see whether or not he would come back with me with other ways to do so. I've been saying all week, we had an even shot to keep them here. Based upon my last negotiation with him, I'm convinced that those odds have increased seven to three in favor of keeping the team here in the City. The next twenty-four, forty-eight hours will tell us more than what we know now.

We've put on the table for him, you should know, a package that basically said that we're willing to match what you have in Phoenix. But we want to make sure that we know who will manage the team. He, in fact, did not accept that. And we're back talking about other alternatives at this time. But he has said to me, in no uncertain terms, I want to keep the team here. We're trying to find a way to do it. We're working with him. We're talking with him. We're talking with his people. And I think that it could be worked out. I don't know.

COSELL: Okay sir. Let's assume negotiations fail, fall through. Their lease runs at Vet Stadium through 1991. Will you undertake injunctive action to keep them there?

GOODE: Our lease runs at the Vet until the year 2001. And we're prepared to go into court, whenever he tells us he intends to leave, and to enforce the terms of that lease. We are going to go in and ask for a temporary restraining order. We feel that under that lease, that we have the right to keep the team here until the year 2001.

COSELL: I understand, sir. Now, do you feel -- having seen the history of sports operators carpetbagging franchises earlier in this telecast -- do you feel that the City has been undignified, humiliated and, indeed, that you're being blackmailed to keep a sports operator in that City, so that he can pay off his personal debts?

GOODE: Well I feel that the National Football League and the Congressmen have to -- someone ought to put into place some kind of rule, some kind of law, where there would, in fact, be a process, which people had to go through before they can do this.

I should not have to wake up at 6:30 a.m. in the morning, and have the radio tell me that the football team, which has been here for fifty-one years, intends to leave the City. There ought to be a process by which they go through. I've said all along, that we're willing to help that team, to support that team, to keep them here. If they have fiscal problems, then talk with us about it. But there was no prior notice to us. And the first notice came via the news media. So I think that we ought to have a rule in place, that will help us to have a process, by which we can compete in this process.

COSELL: Thank you very much, Mr. Mayor. What happened to you is exactly what you heard Mayor William Donald Schaefer of Baltimore say had happened to him. We'll be back in just a moment with Senator Arlen Specter of Pennsylvania.

(COMMERCIALS)

COSELL: At WPVI in Philadelphia, Senator Arlen Specter of the State of Pennsylvania. You've seen the history piece at the start of the telecast, Senator. Now, right to the point. Is there any reason in the world, as you see it, why the National Football League can't put its own house in order?

SENATOR ARLEN SPECTER: No. The NFL has the full power, under the federal decisions -- federal court decisions in the Raiders case -- to establish reasonable rules to stop franchises from being moved, unless teams are in financial distress or have inadequate stadiums, providing the League would have a vote of a simple majority. The League could do that, and right now stop the move of the Eagles to Phoenix or any similar situation in the future, which didn't have some reasonable basis for the move.

COSELL: Senator, let me get then right to the next point. Did you or did you not dispatch a letter to Commissioner Pete Rosell, suggesting he take exactly that course?

SPECTER: Yes I did, Howard. And I have been working with

Commissioner Rosell, since back in 1982, on this precise problem, when they came to the Judiciary Committee. And we had hearings, and I proposed legislation to deal with the Raiders' case, which provided that no team could move unless they were in financial distress, proved over a reasonable period of time -- three years, or had an inadequate stadium.

Because I believe the fans have an interest in franchises, and sports are not businesses like any other kind. And, had that law passed, or had the League followed the suggestion of that law to establish such standards, the League would be in a perfect position now to keep the Eagles in Philadelphia; to have stopped the move of the Colts; and to bring some order into the hectic, chaotic situation which now threatens movement of sports franchises.

COSELL: And isn't one of the basic problems in dealing with this issue, Senator, right on the line, the fact that when the Supreme Court of the United States refused to hear the Raiders' case, every paper in the land, factually, except the "Wall Street Journal", said the NFL was stripped of its power to control franchise transfers, and that was false. Is that not so, sir.

SPECTER: Correct. When you read the cases, Howard, as you and I have, from a legal point of view, anti-trust Constitutional law, it is plain that the National Football League has the power to have reasonable restraints on franchise movements. They can stop a franchise from moving if it doesn't have a good reason to do so. If the Eagles were losing money; if the fans weren't supporting the Eagles; if they had a terrible stadium, the Eagles would have a basis to move. And, if the League were to have a rule which said, you have to persuade a majority of the owners in order to move, that would stand up under the anti-trust laws in the federal court decisions.

COSELL: All right, sir. Then, is it likely that the NFL will ever get legislation that it wants; to wit, anti-trust exemptions; since, as you have stated, they have the power, if they adhere to the current laws of the land, to adjust and to control franchise removals.

SPECTER: Howard, my judgement is that the NFL will not get anti-trust exemption, and they should not, because the ramifications or implications of that are so broad, that no one can predict where it would go. And I believe, based on conversations that I've had with Commissioner Rosell -- and I believe that he's really working to try to solve this problem in a constructive way. Commissioner Rosell is not looking for anti-trust exemption at the present time. I believe that the NFL ought to put its house in order.

But if it doesn't, there is growing sentiment in the Congress -- my colleague Senator Heinz agrees with me. Senator Gorton of Washington has proposed similar legislation, which passed out of the Commerce Committee last week. I talked to Slate earlier this week. There are thirty-one states -- I tabulated them day before yesterday -- thirty-one states which have sports franchises, which could receive a substantial shock like Baltimore did, and Oakland did, and Philadelphia might, unless some action is taken. Now, thirty-one's a majority. And I think if the problem is not solved by the Leagues, the Congress will act. And, of course, we all know, that at the private interest, the Leagues would be much better off if they acted themsevles. Because, if Congress gets into it, it might not be quite so comfortable for everybody.

COSELL: Senator Specter, you have been very clear. I can't thank you enough. Maybe the public will now understand. And to you, Senator, and to you, Mr. Mayor, thank you very much for being with us. And it's been a delight to have you both. It's time for the American people to understand where we're heading with regard to sports franchises.

(COMMERCIALS)

COSELL: Thank you for being with us today. Back next week, four o'clock Eastern and Pacific times, three o'clock Central.

Senator SPECTER. We very much appreciate your being here this morning, Mr. Cosell, on a day which has the east coast in its wintry grip.

STATEMENT OF HOWARD COSELL, ABC PUBLIC RELATIONS, NEW YORK, NY

Mr. COSELL. Thank you very much, Senator Specter, and I should like to emphasize one thing at the outset, as I did in my last appearance before this committee. Once again, I appear as an individual, solely on my own behalf and not as a representative of my company because my views are not necessarily the same as those of the American Broadcasting Co.'s in the particular matters under consideration by the committee here.

I should also like to address Senator Metzenbaum, who dropped a number of bombshells in a hurry, including his foray on the benefits of free enterprise in this country, with which I totally agree. And yet, the good Senator will recollect when I appeared before his committee on matters involving sport because he was deeply distraught by the disarray into which academics and education had fallen in this country because of the overemphasis and distortion of the values of sports at the intercollegiate level.

And on that occasion, Senator Metzenbaum, you will readily recollect that we had present the president of the Miami University of Florida, who indeed will begin a 100-university presidents' convention on March 1. And we also had Dean Smith, the head coach of the North Carolina University basketball team, and I commented that his greatest recent achievement was the development of grace as he accepted the big defeat year after year after year.

But it was good to hear you talk, sir, about free enterprise because I think Senator Specter has touched on this matter, and very clearly. You see, in theorem, everything you said is exactly true.

Of course, we are a nation beset by all of the terrible problems you have expanded on; no question about it. But it is also part of the American reality because we are taught almost from birth about the importance of sports in the American society.

We are taught almost from birth that the game is a religious ritual; that we must have the Camelot that the game provides to guide us through the daily Circes from the travails of human life.

We live with a whole series of postulates that are at once fraudulent and, at the same time, do not really connote the values of the very civilization you have been talking about.

That being the case, we have watched sport invade the law, the politics, the economics, the sociology, the medical world, the educational world of the society, and we must give heed to it.

I want to take it a step further, sir, in terms of free enterprise and in terms of several phrases that Senator DeConcini used. For instance, he used a word, "dicta." Now, you know, Senator Metzenbaum, so do you, Senator Specter, and because you used the word, Senator DeConcini, I take it you know, too, that dicta is a word employed to connote statements of an opinion by a judge in a courtroom that do not relate to the specific issue or law of the case.

It was conclusory, I suggest, Senator DeConcini, for you to use that word, "dicta"—conclusory at law. You were referring, I take it, to two points in the case histories of the Raiders.

Point No. 1 was Judge Praegerson referring to majority opinion. That could be taken as dicta, and indeed in my talks with Commissioner Rozelle, he referred to Mr. Tagliabue, counsel, who is here in the room today, saying that it was his counsel's opinion that it was dicta.

All right, sir. It was picked up by the Ninth Circuit Court of Appeals; not a Los Angeles court, as frequently referred to by the commissioner of the National Football League, but a court involving 11 States and 25 different judges.

And they clearly set forth a series of standards and guidelines, plus a majority vote.

Senator DECONCINI. Well, Judge Cosell, I have to disagree with your interpretation. You are entitled to it, as I am, but do not come here and challenge my interpretation of the word "dicta." If you do not like what I say about dicta, then forget it and go on with your testimony.

We are here to listen to you to learn something of wisdom, not for you to come here and give us a law school examination.

Mr. COSELL. I will accept that, sir, and I will go back to my original point, Senator DeConcini. The point is simply this: that the court laid out a series of guidelines and standards.

David Stern is the commissioner of the National Basketball Association, Senator. He is also a brilliant man and a skilled lawyer who edited the Columbia University Law Review. The minute the Ninth Circuit Court of Appeals decision stood by way of the Supreme Court denying certiorari, David Stern and his owners changed the rules to conform to the laws of the land.

Now, Senator DeConcini, it is my judgment that the National Football League has steadfastly refused to do exactly that. It is my contention, sir——

Senator DECONCINI. Mr. Cosell, how do you explain that the St. Louis Cardinals have advised the National Football League that they do not believe that case, and they have good lawyers and they are only an opinion from those lawyers that they do not think any standards are set forth?

Mr. COSELL. I believe that based upon——

Senator DECONCINI. How do you explain that?

Mr. COSELL. I will try to explain it this way, Senator. I believe that the National Football League owners are now using the very tactic that the Commissioner used through all of the years.

I believe the case entered into the Congressional Record, the show entered into the Congressional Record by Senator Specter, establishes peradventure there has been a whole pattern of refusal simply to amend the NFL constitution to conform to the laws of the land; witness the rule of reason in antitrust law.

Let me cite specific evidences. The National Football League has actually contended that there was not a franchise move since 1960 until the *Raiders* case; the 1960 move, to wit, as Joe Brown, who put out the statement in that regard sits in this room—the 1960 removal was the Chicago Cardinals to St. Louis.

And then they said their only next removal was 1982, the Raiders to Los Angeles. I submit, sir, that the Giants moved to New Jersey. I submit, sir, that that is an absolute move in terms of the jurisdictional structure and geographical structure of this country.

I submit that Senators Lautenberg and Bradley are Senators from the great State of New Jersey. I submit, sir, that that is its own voting and tax jurisdiction, and that it is a defiance of this country's governmental structure to pretend otherwise.

In 1978, I submit, sir, that the Los Angeles Rams moved to the county jurisdiction of Orange County in the city built by a mouse. [Laughter.]

And I submit it is a different tax structure, and I submit, too, sir, that that was evidence of a removal. Sir, I submit to you the October intrigue of October 4 and 5 in 1978 in Chicago, when the NFL owners met in conclave.

And they met, and written in notes, entered in the transcripts of the *Raiders* cases—and the man who wrote the notes is in this room right now, a senior partner of Williams & Connally, who is, as a matter of fact, to this day the attorney for a number of teams in the National Football League.

I submit, sir, that his first note written was stated by counsel to the league that the then existent rule 4.3 was violative of the antitrust laws, per se. And the Los Angeles Coliseum Commission at that time had already filed an antitrust suit.

It did not involve the Raiders then. It was an antitrust suit predicated upon their wanting to get another team into L.A. because the late Carroll Rosenbloom was moving down to Orange County.

OK, it was written clearly; "no defense," the words by Hamilton Carruthers to an antitrust suit. As the 2 days of meetings wound on and they sought to change that rule to make it perhaps conform to the rule of reason, they got down to a three-quarters vote rule, and Mr. Carruthers still expressed doubt as to whether or not that would conform to the rule of reason.

In any event, as votes took place, Al Davis of the Raiders stood up and he said, "I pass, the Raiders pass and reserve their rights." Nobody in the room knew what the hell that meant, if you want to know the plain truth.

So, up jumped Gene Kline, then the majority owner of the San Diego Chargers, and he said, "The San Diego Chargers pass and reserve the same rights as the Raiders," whereupon the gentleman in this room representing the Washington Redskins jumped up and said, "The Redskins pass and reserve the same rights as the Raiders and the Chargers."

And then Commissioner Rozelle said the whole thing is passed and everybody reserves their rights, and this man would tell you nobody knew what the hell was reserved or what it was all about. And Lamar Hunt, the owner of the Kansas City Chiefs, subsequently wrote a memo to John Steadman, his general manager. He said, "This passed, but I do not know how the hell it passed or what it was all about."

So this does not come new, this concern about the antitrust laws, to the National Football League. It has been deep and abiding. Indeed, counsel to the National Football League at the time of the merger in 1966, told the Commissioner that indeed that rule was very questionable under the antitrust laws.

And counsel to the old American Football League at the time of merger said the same thing. So we went on and on and on. The plain truth is that in the 1970's we had the Buffalo caper, Ralph Wilson standing and telling the media people in Erie County, if the Bills do not get a new stadium, we have no choice but to move; this after $1,450,000 of taxpayers' money spent to expand War Memorial Stadium.

So, the Erie County people took the bait and they contracted for a $90 million multipurpose domed stadium. No, no, said Ralph Wilson, we do not want that; we want our own single-purpose stadium. So they got Rich Stadium, $41 million, plus $90 million in potential damages, plus $1,450,000.

And then there were the Purple People Eaters, the Minnesota Vikings, and a lovely man—and these are decent people—named Max Winter went before the State legislature and ominous headlines appeared, "It Is Dome Time or Doom Time," and dome won out over doom and now there is a domed stadium in downtown Minneapolis, and $3 million a year, nondividable with the visiting team, goes in the form of luxury loges.

The Giants, by the way, get between $1 and $2 million, which is why they absconded with the then most profitable team in the National Football League. And then Bob Irsay took his show on the road—Helicopter Bob. [Laughter.]

He landed in the crowded Gator Bowl, jumped out of the helicopter, 50,000 fans screaming "we want the Colts." And, by God, they thought they were going to get them. You ought to see the letter I got from Mayor Gottbold.

But this is the way the NFL operated, and he said, his words, "Either these people in Baltimore get off their duffs the way I told them or else," or else they might be the Jacksonville Colts or the Memphis Colts or the L.A. Colts, and it went on and on and on. Even Joe Robbie took a trip out to Los Angeles.

No, I do not think this is in the best service of our country, and I think this gets into every avenue of the society, as I explained to Senator Metzenbaum. I think it is time to set this straight, and since they will not conform to the law on their own, I support exuberantly S. 172; all it does is take those words.

Why could not the NFL try those words? Let us assume you are right, Senator, and it is dicta. Mr. Stern, the Commissioner of the NBA, immediately adopted those words. What is the cost? Why, instead, continue with this? Why keep raping cities?

I think it is time to put a stop to it. I feel deeply about it; my heart and soul is in it. I have made a study of this throughout my adult life, and I think you should know, Senator, that I have edited one of the major law reviews in this country; that, at the request of Attorney General Griffin Bell, I addressed the Department of Justice in the great hall on sports and the law. I have been a keynote speaker before the American Bar Association annual convention. And just last Friday, the very great Brown University established a national scholarship in my name—one of the reasons, the work I have done on franchise shifts.

So I state my case, Senator, and I do not believe the kind of wrongdoing, as I see it, that the National Football League has been guilty of should be rewarded with your bill, which, in effect, gives them a blanket exemption.

I do not believe injustice and wrongdoing should be rewarded. I think, instead, it should be penalized. So I support the Professional Football Stabilization Act of 1985. Thank you very much.

Senator SPECTER. Thank you, Mr. Cosell.

We will proceed on a 5-minute rule, with each Senator taking turns for that period of time for questions, if that is satisfactory with you, gentlemen.

Mr. Cosell, in supporting Senate bill 172, I take you agree with the general proposition that if a football team is making money and has an adequate stadium that they ought to stay in the city where they are located at the present time.

Mr. COSELL. I absolutely do.

Senator SPECTER. Would you amplify why you think that is a fair approach, given a backdrop of the free enterprise system and the general concept that an owner of private property ought to be permitted to do whatever he chooses with it?

Mr. COSELL. It is a fair approach, sir, because the sports world has always had a double-edged posture at law. The genesis, for instance, of franchise shifts goes back to the great O'Malley land grab.

He came before Manny Celler's House antitrust committee, Mr. O'Malley did, in 1956, and he stood there and he used some of your phraseology because you are a lawyer, sir, and in your bill you used words from Nebea against New York, the famous milk case when the milk regulation laws were sustained, tinged with and affected by the public interest.

And he said:

> Look, do not treat us like any other business. We are tinged with and affected by the public interest. I do not own the Brooklyn Dodgers; the people of Brooklyn own the Brooklyn Dodgers. Ergo, protect our reserve law; do not touch it.

That is the rule in baseball that used to bind one man to one team forever.

And the Congress bought it. The late Emanuel Celler, who was my Congressman, bought it at the time. However, the minute he moved out for the 295 acres in Chavez Ravine, Walter O'Malley said;

> I do not understand the furor. These are the United States of America. This is my business; I own it. I own the Brooklyn Dodgers. I have to move to compete with Milwaukee, and so I am going to Los Angeles.

OK, once you start adopting a double-edged posture for sports in this country, which we have done, Senator, no mistake about it—Pete Rozelle went before the Congress in 1962 and said, "Hey, give us revenue sharing." By the way, he deserves to be in the Hall of Fame for that. [Laughter.]

At the outset, it enabled Green Bay to compete with a city like New York or Chicago or Los Angeles. Today, revenue sharing is more complex than that because today you can get the same amount from television, but you may not have the luxury loges. You could wind up $5 million short.

There is a whole new game today and you have got to understand revenue sharing, but the basic point in answer to your question is they have always had a double-edged posture. And when Pete came before the Senate in 1962 and again in 1966, he pleaded public interest.

Ergo, if that be true, and I believe it is true, such is the importance given to sports franchises, yes, they should stay in the city that has adopted them and has supported them.

Are there grounds for franchise removals? Yes. You have stated them in your bill—loss of money over a continuing and reasonable period of years—say, 3—plus the other standards, a look at the demographics, a look at all of the things set forth by the ninth circuit.

Senator SPECTER. Mr. Cosell, you have commented on Senate bill 298 introduced by Senator DeConcini. As to Senate bill 287, which has been introduced by Senator Gorton and others, what is your judgment as to that bill?

Mr. COSELL. I think Senator Gorton's bill is clearly antitrust in all directions; direction No. 1, the National Football League. How dare anybody tell the National Football League where it has got to put teams. There, I agree with Senator DeConcini totally. Nobody can tell that league where they have to put their teams. That is item one.

Item two, I think it is antitrust against the young U.S. Football League because already the Baltimore Stars, embraced by Mayor William Donald Schaefer, are in that city, and the Oakland Invaders are in Oakland. And I think it is discriminatory against those teams in that league. So I think it is antitrust in all directions.

Senator SPECTER. Mr. Cosell, as you have traced the chronology of Buffalo and Minnesota and what Mr. Irsay did—and I will finish this question and then yield to Senator Metzenbaum—you described a series of tactics by professional sports owners which fits the classical definition of extortion, which is a crime under the laws of our 50 States, extracting something of value under threat.

Would you say that that is about what it amounts to?

Mr. COSELL. Well, you heard me question Mayor Wilson Goode of Philadelphia in that vein on the Sportsbeat show of which you were a part, sir. And I said bluntly, do you not feel that you have been subjected to blackmail? And, yes, I view it as blackmail or extortion.

And I understand exactly what Billy Bidwell is after with St. Louis. One of the amusing things, Senator DeConcini, is what really goes on in sports because in a practice session for the Senior Bowl game in Mobile, Billy Bidwell ran up to the hated Al Davis and said, "Al, I need your help; they are trying to keep me in St. Louis," because he wants to go to your city, sir. And Davis gave him quite an answer, quite an answer. [Laughter.]

Senator SPECTER. Well, my time has expired, so I will not ask you what that answer is. [Laughter.]

Nor will I pick up on the thread at this moment of your comment about the duress imposed upon the city of Philadelphia, but I shall in the next round of questioning.

I yield now to Senator Metzenbaum.

Senator METZENBAUM. I have no questions.

Senator SPECTER. Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman.

Mr. Cosell, you have made clear your position that you favor the Senator from Pennsylvania's bill. Do you think it is necessary, and I think I know the answer to this, that some exemption be granted? Is that a premise that you believe is proper for the Congress?

Mr. COSELL. I would grant the limited exemption discussed by Senator Specter.

Senator DECONCINI. And would you not grant it or extend it any further to any other professional sports?

Mr. COSELL. May I answer that question, sir, with this? I even answer, yes, I would grant a limited exemption, reluctantly. I want to take you back to——

Senator DECONCINI. To other sports?

Mr. COSELL. No; to any sport. I would like to take you back, sir, to April 5, 1982. This is a respected business magazine; it is Business Week, one of the most respected magazines in this country. May I read? It will be but brief.

> In 1922—

and this relates to you, Senator Metzenbaum, when you said repeal that hateful anomaly at law that has baseball exempt from the antitrust law—

> In 1922, the Supreme Court, for reasons best known to itself, decided that baseball was not a business and granted it immunity from antitrust laws.
>
> Some Congressmen want to end that immunity, but even while they ponder the move, the National Football League has started a drive to win antitrust immunity for itself. About the only thing more ridiculous than that idea would be for Congress to take it seriously.
>
> Not even NFL Commissioner Pete Rozelle, the quarterback of football's lobbying effort in Congress, argues that football is not a business. In fact, he positively revels in the NFL's $500 million annual gross revenues and its new $1.9 billion contract for TV coverage rights for professional football games.
>
> "But," complains Rozelle, "in professional sports, literally every action, every business judgment, every decision of a league is now subject to attack under the antitrust laws."
>
> Rozelle may be amazed to learn that every other business faces exactly that same situation everyday, and that it is precisely the point of the antitrust laws.

I think in net effect, Senator, that is my answer. There should be no exemptions.

Senator DECONCINI. There should be no exemptions.

Mr. COSELL. Let them run their businesses like any other. Lord knows they are big business.

Senator DECONCINI. And I take it you would change your position in support of S. 172. Is that right?

Mr. COSELL. No. I said the history of what I deemed to be wrongdoing is what causes me to support 172—172 should not be necessary. If that league had——.

Senator DECONCINI. But it does grant an exemption, does it not, Mr. Cosell?

Mr. COSELL. It does grant a limited exemption.

Senator DECONCINI. So you favor the limited exemption?

Mr. COSELL. It does grant a limited exemption.

Senator DECONCINI. OK.

Mr. COSELL. I accepted that for the sake of conforming that league to the laws of the land; that is all. But it was never needed, and you know, Senator Specter, I have always felt that all that was needed was for the league to conform itself to the laws of the land, exactly as stated by the Ninth Circuit Court of Appeals in the *Raiders* case.

And I think, Senator DeConcini, in fairness to me and my position, we should take a look at the fact that when the Supreme Court denied certiorari in that case, all that did was go back to the opinion of the ninth circuit, sir.

Nobody said that the NFL did not have power, the way it was reported, to stop franchise shifts. I suggest, sir, they do have the power, have always had the power, and they know it, going back to 1966 when the problem was first brought to their attention.

Senator DECONCINI. You made that very clear. I happen to disagree, but let me pursue the last part of my first and only question. Now, you have stated that you do support a limited antitrust exemption, as set out by the distinguished Senator from Pennsylvania's S. 172.

Do you think that there should be this like exemption granted to the other professional sports that are not covered now?

Mr. COSELL. No, I do not.

Senator DECONCINI. Thank you. Thank you, Mr. Chairman.

Senator SPECTER. Thank you, Senator DeConcini.

Mr. Cosell, when Billy Bidwell of the Cardinals approached Al Davis of the Raiders and said, "Al, I need your help," did Al Davis make a response?

Mr. COSELL. Yes.

Senator SPECTER. And what was that response?

Mr. COSELL. I do not think this is the place for profanities and obscenities.

Senator SPECTER. Is that what Al Davis said to Billy Bidwell? [Laughter.]

Mr. COSELL. That is not what he said to Billy Bidwell. What he said to Billy Bidwell was you come but lately, but not in those civilized terms.

Senator METZENBAUM. I am curious why the Senator from Pennsylvania is so curious. Will it make a persuasive argument for his bill?

Senator SPECTER. Back to the city of Philadelphia and the choice which you prefer to blackmail as opposed to extortion, they are fairly similar in the criminal lexicon, Mr. Cosell.

What is your evaluation of the responsibility, if any, of the National Football League to the city of Philadelphia in the context where the NFL stood by without establishing any rules regulating the moves of the football team after the Raiders experience and after the Federal court decisions?

And I think there is much merit in your position that the National Football League could regulate its own affairs by establishing reasonable standards, but the NFL has taken the position that they are unwilling to do so without the protection of congressional action to give the limited antitrust exemptions; there would be no doubt about it.

And we do know that there are enough vagaries in what courts may decide, so that it is somewhat unclear. But in the context of the inaction by the National Football League so that Philadelphia was confronted with a situation in December of last year where the Eagles were about to move and concessions were made in the range of some $30 million—without getting into whether that was right or wrong, what do you consider to be the responsibility of the National Football League?

Mr. COSELL. I think they had a responsibility to quickly amend their rules by due notice to all of the owners, amend those rules, and then vote on Mr. Tose's threat to remove and deny it.

I discussed this with Commissioner Rozelle on the phone. I asked him to appear on the Sportsbeat show, on which you and Mayor Goode appeared. You know that; I told you that. Mr. Rozelle understandably could not appear then. He made his case, and made it very persuasively. He said:

> In good conscience, I have not met with my owners. My common sense, my morals, tells me I should not appear until and unless I have met with my owners.

Fine. I then said, Pete, why do you not change your rule? From the beginning, from 1966, it has been admitted that you have got a problem; that the rule is, per se, violative of antitrust. For heaven's sake, change it. He said, "Mr. Tagliabue," who, I repeat, is in this room, "says it is mere dicta by Judge Praegerson." That is in the district court.

Well, I find that conclusory on the part of Mr. Tagliabue, but he has every right to say that what I say is conclusory. Fine, but it is no longer pure dicta when you read the circuit court of appeals' opinion, and I am talking about 11 States and 25 judges.

And I just cannot see why they would not do it. I sat through the years and begged Pete. It started with the Giants. I said it is not—this is our posture of suburban removal: The fans can still go over there; they can still see it on the same television station. Not the issue at all. The issue is taxes, business—the food business, the hotel business.

Baron Hilton has two new hotels over there; they are both in Secaucus. There is a great new Italian restaurant over there; it is named Sonny D's; buildings sprouting up, everything, at the expense of what I happen to think is the greatest city in the world, New York. I am prejudiced in that regard.

But I do not want an employee of the National Football League walking in on me at lunch at the Dorsett Hotel on 54th Street with an ABC person and tell me the Jets and the Giants never moved. That is an arrogance beyond belief, an audacity that defies the governmental structure of our Nation. Of course, they moved.

And on December 6, when the oil magnate, Leon Hess, had a party, renting out the Four Seasons for his son who is about to be married—Senator Bill Bradley was there with me and we talked about this problem, and Senator Bill Bradley vowed that he is going to get that matter changed once and for all.

My evaluation, then, in response to your question is, yes, there was a responsibility that was not met. There has been an ongoing arrogance and audacity in defiance of the public interest that could only be stopped at this point by your bill.

Senator DeConcini did not trap me. He had a valid point. I basically believe with Business Week against any exemptions, and that was what Senator Metzenbaum postulated earlier on, and I agreed with that. But I am left without recourse.

As long as this whole pattern of behavior continues, then, Senator Specter, your bill deserves to be passed, in my opinion.

Senator SPECTER. Thank you very much, Mr. Cosell.

Senator Metzenbaum.

Senator METZENBAUM. Mr. Cosell, I do not want to argue or debate the specifics, but as I sit here thinking about the thrust of Senator Specter's bill, I try to compare it to a large corporate operation in city *x*.

This corporation had a UDAG grant. It built its magnificent structure on the basis of industrial revenue bonds and subsidized on taxes. It had an EDA grant. The community gave it tax exemption for 10 or 20 years. It had substantial other benefits, including the fact that the labor union had agreed to giveups and concessions.

It was making money. Everything was going great, but the company decided they wanted to leave community *x* and go to community *y* because maybe it was sunny out there, maybe lots of different "maybes."

And since these are businesses that that is a business, if we did it for football, should we also do it for some other part of the economy and say they cannot leave a community as long as they are making money, unless they can prove that the premises are inadequate that they are in?

Mr. COSELL. Senator Metzenbaum, your question is extremely well taken and very cleverly put, but the analogy is not apt. The reason why the sports world deserves to be penalized in the manner that Senator Specter's bill describes is that historically, as I have pointed out, they have lived by a double-edged sword.

They always seek special legislation on their behalf, on grounds that they are tinged with, using a legal phraseology, and affected by the public interest. That is not essentially true of the average business.

They live, as Business Week says, with the antitrust laws. They have that freedom to go into the Sun Belt if they want, if they are making money, just as American Airlines went to Dallas from New York. I do not find the analogy that proper.

Senator METZENBAUM. I failed to include one other item. When that industry leaves, it will totally decimate the community. This hypothetical industry is the major employer; without it, all the merchants in the community, all the doctors, all the lawyers, everything, fall apart.

I am trying to make the hypothetical case so that there is also a public interest in keeping that business there. And I might tell you if we could pass some laws like that, I might very well propose some because we have lost some in Ohio to some sunny States.

Mr. COSELL. I know that. I know exactly what you are referring to, sir, and it is a terrible thing and it may be that legislation will have to be passed in that regard when a whole community falls by the wayside.

And I know you face that problem in your State, sir, but you must confess that industry, on balance, has not sought to live by a double standard in terms of legislation on its behalf historically. Am I right, sir, in that regard?

Senator METZENBAUM. Certainly.

Mr. COSELL. Thank you.

Senator METZENBAUM. Thank you.

Senator SPECTER. Thank you, Senator Metzenbaum.

Thank you very much, Mr. Cosell.

Mr. COSELL. Thank you, sir.

Senator SPECTER. We very much appreciate your assistance.

[The following material was subsequently supplied for the record:]

SENATOR STROM THURMOND'S
QUESTIONS FOR HOWARD COSELL

1. IN HEARINGS IN PRIOR CONGRESSES, I BELIEVE YOU URGED THAT ALL SPORTS BE TREATED CONSISTENTLY FOR ANTITRUST PURPOSES. DO YOU SUPPORT REPEAL OF THE ANTITRUST EXEMPTION FOR PROFESSIONAL BASEBALL?

2. LEGISLATION WHICH IS PENDING IN THE COMMERCE COMMITTEE WOULD ESSENTIALLY CREATE A FEDERAL MEDIATION BOARD TO DEAL WITH DISPUTES IN THIS AREA. DO YOU SUPPORT SUCH AN APPROACH?

3. THE NINTH CIRCUIT CONCLUDED IN THE OAKLAND RAIDERS CASE THAT THE NATIONAL FOOTBALL LEAGUE WAS NOT A JOINT VENTURE FOR ANTITRUST PURPOSES. DO YOU AGREE WITH THIS CONCLUSION?

4. THE PRESS HAS REPORTED RECENTLY THAT TV VIEWERSHIP OF SOME FOOTBALL GAMES DECLINED DURING THE PAST SEASON. WHAT MIGHT BE THE CAUSE OF THIS AND DOES IT HAVE ANY IMPLICATIONS FOR THE TYPES OF PROBLEMS WE ARE CONSIDERING TODAY?

5. WE HAVE HEARD CONCERNS ABOUT THE ADVERSE IMPACT SUFFERED BY LOCAL COMMUNITIES WHEN A PROFESSIONAL SPORTS TEAM RELOCATES. WHAT CAN THE LOCALITIES DO TO PROTECT THEMSELVES?

February 12, 1985

ANSWERS TO SENATOR STROM THURMOND'S QUESTIONS TO HOWARD COSELL

The answer to question #1: yes

The answer to question #2: no

The answer to question #3: yes

The answer to question #4: The answers are many and varied, to wit:

1. Fractionalization of markets because of new technology and outlets that cater to specific tastes such as MTV.
2. Growth of competition, i.e. the United States Football League.
3. Saturation of football market, i.e., influx of a host of college games available on TV.
4. Growth of public boredom with the sport because of the sameness of the contests.
5. Sameness of presentation also contributing to boredom in viewing.
6. Adverse impact of proliferation of drug abuse.
7. Adverse aftermath of players strike.
8. Carpetbagging of franchises or threats to carpetbag franchises, while cities are, in effect, blackmailed.

The only way all of the above has impact for anti trust is to negate any argument for anti trust exemption on the part of the NFL, barring possibly the limited anti trust which would be granted by Senator Specter's bill and which is only a necessity, in my opinion, by the refusal of the NFL to conform its own constitution to current law.

The answer to question #5: The localities can protect themselves by signing long-term leases with the franchise operators and if the locality is liable for maintanence of stadium, make sure stadium is maintained. Otherwise, if the League won't act to protect the community, but insists upon ripping them off, the only answer is in the form of the legislation proposed by Senator Specter.

Senator SPECTER. I would now like to call on the counsel to the Commissioner of the National Football League, Jay Moyer. Mr. Moyer comes to his position with a distinguished legal and academic background: magna cum laude from Dartmouth, where he was Phi Beta Kappa. He got his law degree from Duke University. He has been in private practice in Cleveland; served on the American Arbitration Association's Regional Advisory Board.

He joined the National Football League as counsel to the commissioner in November 1972. Mr. Moyer, thank you very much for joining us, and you are accompanied by cocounsel, Mr. Paul Tagliabue.

STATEMENT OF JAY MOYER, COUNSEL TO THE COMMISSIONER, NATIONAL FOOTBALL LEAGUE, NEW YORK, NY, ACCOMPANIED BY PAUL TAGLIABUE, COCOUNSEL, NATIONAL FOOTBALL LEAGUE

Mr. MOYER. Thank you, Senator. We are aware, of course, of the two bills currently before the Judiciary Committee, your bill, S. 172, and Senator DeConcini's bill, S. 298. We are also aware of the bills that, as has been referred to this morning, are currently before the Senate Commerce Committee, S. 259 and S. 287.

The problem to which your bill, Senator, and all these bills are directed is a common problem—the perception that there is a currently imperiled relationship between teams in professional sports and their communities.

It is very difficult for me, Senator, adequately to convey the full measure of the National Football League's frustration with this problem. We are in a situation factually, despite Mr. Cosell's characterization of the facts—and I will return to that, with your permission, in a few minutes—we are in a situation where, in its entire history, no well-supported team has been permitted by the National Football League to abandon its fans and its home area.

But we are also in a situation now where, by trying to follow Federal policy, as enunciated to us from time to time by the Congress—a policy of team-community stability—we have been declared in violation of Federal law by a divided court of appeals for doing exactly what the sponsors of all of these bills would have had us do, and exactly what the bills would require us to do—preserve stability between a well-supported team and its home community.

We have been penalized in excess of $50 million in antitrust treble damages for trying to keep a well-supported team in its agreed-on home territory. As Senator DeConcini noted earlier, other sports leagues—specifically, the National Hockey League and the National Basketball Association—currently face similar challenges for similarly trying to respect the policy that your bill and the other bills introduced by your Senate colleagues wish to advance.

This is a very unusual reward for trying to do what you and your colleagues have urged us to do. We are therefore no strangers to your concerns; we share your concerns, and we, in the NFL, have already paid a very heavy price, subject to appeals that are still pending, for having tried to uphold that principle.

I do not enjoy this, but I must tell you that it is awfully difficult, also, to convey the full measure of our frustration over the distortion that the preceding witness has brought to this issue. He brought it to us today, as he has brought it to us in many respects for the last 4 or 5 years.

Mr. Cosell, in our view, did not set the record straight; he obfuscated it. He blurred over the facts with selective omissions, distortion, and outright misinformation, some of which I must try to correct. It is difficult to know where to begin. [Laughter.]

Perhaps the major flaw in Mr. Cosell's presentation, in my view, is his quote from, I believe it was Business Week—correct me if I am wrong—the essence of which seemed to be that it is ridiculous for the Congress to do anything to resolve the antitrust confusion in professional sports because, after all, sports leagues are just like any other business.

Let me suggest to you one respect in which they are wholly unlike any other business I know of. When the board of directors of any company you want to name—General Motors, Nationwide Insurance, you name it—convenes and makes a business decision for the company, that decision is not subject to attack under section 1 of the Sherman Act as an antitrust conspiracy.

If the decision is one that unfairly impacts on other persons outside that company, then, yes, it could be an antitrust violation, but it is not a violation just because it was made by the board of directors.

When we in the National Football League try to make a decision, and the 28 members of the league's executive committee meet, debate, discuss, use their judgment and decide, that is, as the law is currently interpreted in some quarters, an antitrust violation in and of itself; it is a conspiracy. So we are vulnerable in ways that other businesses assuredly are not.

And all we seek is to be treated, in the narrow respects encompassed by your bill, Senator Specter, and the other bills currently before the Congress—seek to be treated as a business making business decisions.

I could go on for longer than you want me to and longer than I want to about some of the factual inaccuracies you heard this morning. You heard, for example, about the so-called "Buffalo caper" in Mr. Cosell's litany of supposed sins committed by "the National Football League"; not, you notice, by the individual owners, but by the "National Football League."

The "Buffalo caper" took Buffalo's team, the Bills, out of a WPA-built stadium, built in the 1930's, grossly inadequate by everyone's measure, including the local politicians, and placed them in a stadium in a near suburb to which the Bills themselves made very, very substantial financial commitments regarding its construction, and pledged to remain in the stadium and indeed to operate it for a 25-year period.

And the bottom line is that Buffalo public officials will tell you that they consider, first, that that stadium is one of the better stadiums in the country and they are proud to have it and, second, their deal with the Bills is among the most favorable stadium leases existing in this Nation.

If that is a "caper" that reflects poorly on the Buffalo Bills, then something is missing from my perception of reality.

Similarly, in Minnesota, the Minnesota Vikings, like the Minnesota Twins, were playing in a stadium in suburban Bloomington which was felt to be outmoded.

There was a consensus on the part of the community that a new facility, a superior facility, was needed. In order to get that facility, which is a multipurpose facility in which two teams play, the Minnesota Vikings agreed to remain in that community for 30 years.

Above and beyond that, the National Football League as a league made commitments regarding the continued presence of a franchise in Minnesota for 30 years, so that the bonds could be fully paid off. And I am advised by Minnesota people that the Vikings' tenancy alone, without regard to the Minnesota Twins or any other user of that stadium—the Vikings tenancy alone will, over the course of 30 years, generate $25 million in excess of what it takes to fully retire the revenue bonds to build the stadium. If that is a ripoff, there should be more ripoffs like it.

Again, I could go on at great length in rebuttal to Mr. Cosell, but, quite frankly, I do not think it is worth the effort. There is one major area which he has stressed which I am compelled to respond to, and it is what I conceive to be the myth of the easy answer.

It is really Al Davis' line that Howard has been parroting for some time, and the essence of it is, well, you do not need any congressional action to resolve this antitrust problem. You could just do what the courts have said, formulate objective standards and reduce your vote to a majority. That is easy; you could do it easily. You are bad people for not having done it yet.

Senator, I wish that were true. I honest to God wish that were true, but it is not true and, in fact, that suggestion is baseless and I will tell you why. As to objective standards, in the *Raiders* case a badly divided court by a 2-to-1 majority entered into its opinion a paragraph's worth of dicta. We have heard that bandied about. I will not try to top Mr. Cosell's definition of the word.

The dicta, which, as you recall well from law school, means something not essential to the decision, was, in essence, well, you might try A, B, C, and D. That is all fine; we might try that.

But the court made no ruling on the point. There is nothing in that court's opinion or in the opinion of any other court in a comparable case that provides the National Football League or any other sports league with any reasonable assurance that simply promulgating standards would resolve the problem.

If Mr. Cosell believes otherwise, we will be very happy to take his personal guarantee, backed by a reputable bank, and act on it, but we are not going to hold our breath until we get it.

Second, even if we could be sure—which we cannot be, based on the current state of judicial pronouncements—that some set of standards would do it, there is no consensus, Senator, on what those standards should be. You have your ideas, others in Congress have other ideas, and others outside Congress have still different ideas.

I cannot help but observe, however, that there are no standards with which you would agree or with which, I think, any of your colleagues would agree by which the Raiders' move could have been justified. Yet, they have a judicial stamp of approval on that move.

Both of these points are well illustrated by the National Basketball Association's current experience, to which Mr. Cosell alluded inaccurately. After the Raiders decision, the same decision that Mr. Cosell says provides the easy answer, the NBA did adopt a set of standards, but they have one curious major omission, Senator, that I think would appall you and I cannot imagine Mr. Cosell is even aware of.

What the NBA standards make no reference to and are utterly silent on is any reference to the record of a team in its current community, or any reference to the interests of that community in the continued presence of its team. That is astonishing.

Commissioner David Stern has told me privately and testified before the Commerce Committee on Monday publicly that he deplores this. He believes, as we do, that the interests of the current community are essential components of any decision, especially a league decision, on whether a team should be moved.

But his lawyers—and Mr. Cosell cannot tar Mr. Tagliabue with this one—his lawyers have advised him that under the ninth circuit's majority decision in the *Raiders* case, they cannot even consider the interests of the team's current community without risking a serious violation of the antitrust laws and heavy damages.

In fact, the San Diego Clippers, with which Mr. Stern's league is currently litigating, have taken the position promulgated by one of the same attorneys that represented the plaintiffs in the *Raiders* case: That no league involvement on any basis under the Sun is permissible. The decision has to be the unilateral decision of the individual team.

So much for Mr. Stern's brilliance, which I do not dispute for one moment, in enacting standards. Dave Stern did the only thing he could have done and it leaves him, in respect of your concerns, Senator, absolutely neutered, and he deplores that as much as we do.

In the NFL's current procedures, to which you briefly alluded, Commissioner Rozelle has bitten that bullet because we believe, as you do and as do the sponsors of all other bills before the Congress, that the current community's interests are valid and essential considerations in any responsible league decision on a move.

But the law is so confused today that all we have done in biting that bullet is created further risks for ourselves and our membership. All we have gotten by pronouncing these new procedures is another license to litigate. But we have done it, and I personally think it is a gutsy thing for us to have done, and not something that should be the subject of the kind of condemnation we have heard from Mr. Cosell.

As to a majority vote, as Mr. Cosell did admit, the ninth circuit did not even—well, I do not think he did admit that. The fact is the ninth circuit nowhere addressed that question, and if he thinks they did, I invite him here now or later at his convenience to show me where they did in that opinion.

The trial judge did mention it as a throwaway line early in the case when he granted a preliminary injunction against the league's trying to take any action to keep the Raiders in Oakland, where they had sold out for 12 years.

Senator Specter. Let me pursue the question of standards with you. Why is it necessary to have 24 out of 28, which is more than three-quarters, if you cannot——

Mr. Moyer. That is not our rule, Senator.

Senator Specter. Excuse me?

Mr. Moyer. That is not our margin. Our margin is 21; it is a three-quarters rule and it is the standard on which we do virtually all of our business in the NFL, and have done it for long before I ever became involved with the league.

There are many theoretical bases, Senator, as you know, for super majority voting in business. I think you have some procedures in Congress where they require more than a majority. But my point is the rule——

Senator Specter. It has been widely publicized that there is a 24——

Mr. Moyer. No, I do not believe so, Senator. There has never been 24. We had a rule years ago that was changed in 1978 that required unanimous approval when a team proposed to move into another team's home territory. That was vulnerable, and that was changed and we brought the decision on franchise relocation down to the very same margin by which we decide every other issue that comes before the league on a day-to-day basis.

Senator Specter. All right, take three-quarters. That is a super majority. The only one I can think of is three-quarters of the States on ratification of an amendment. We have a two-thirds rule on constitutional amendment in the Congress. We have a 60-percent rule on cloture. Why have a three-quarters rule? Why can you not function with a majority rule or a 60 percent rule?

Mr. Moyer. Why would that be helpful, Senator? I mean, when we do all of our other business by a three-quarters basis, why should this be different?

Senator Specter. Well, maybe you ought to do all your business with a lesser rule.

Mr. Moyer. I can see why you might suggest that and it might be a good suggestion, except that I submit to you that that is the league's decision rather than the Congress'.

Senator Specter. Mr. Moyer, what we are trying to look for is some standards here which would pass muster under existing antitrust laws. But let us say that the Congress is going to act, and I understand your position; you would like the Congress to act.

And I understand that what you would like most of all would be Senator DeConcini's bill, which would allow the league to do whatever it chose. Under Senator DeConcini's bill, if the league wanted to go back to unanimity, it could, having an antitrust exemption.

Mr. Moyer. Well, as I understand Senator DeConcini's bill, it simply is a one-way street which would enable leagues to make rules that would keep well-supported teams in their communities, which I understand to be your concern.

Senator Specter. Any rules that the league chose?

Mr. Moyer. Well, let us put it this way: We are not going back to a unanimity rule.

Senator Specter. That is not the question. The question is not what you are going back to. We do not know what you are going back to. The question is what Senator DeConcini's bill would let you go back to, and it would let you go back to unanimity or anything, would it not?

Mr. MOYER. Would it, Paul?

Mr. TAGLIABUE. I think it would.

Senator SPECTER. That is what it says.

Mr. TAGLIABUE. The Danforth bill would not. We support both bills.

Senator SPECTER. I am not on the Danforth bill; I am on the DeConcini bill.

Mr. MOYER. Senator, the voting margin—let me cut this short, if I might, and try to answer you directly.

Senator SPECTER. No, no; we have already gotten an answer to that.

Mr. MOYER. I do not think the voting margin matters. I wonder, though, why you would favor a majority vote which, in effect, would make it easier for a league to vote a team out of its community.

Senator SPECTER. I do not favor a majority vote, if you are asking me a question. I would like to see some reasonable rules. My bill does not call for a majority vote, but my bill would not leave it to the discretion of the National Football League to establish whatever rules it chooses.

And I think I have already illustrated the major fallacy——

Mr. MOYER. Well, when you put the——

Senator SPECTER. Excuse me a minute.

Mr. MOYER. Sorry.

Senator SPECTER. I think I have already illustrated the major fallacy in Senator DeConcini's bill, and I am reluctant to do it in his absence, in allowing you to do whatever you choose, including going back to a unanimous rule.

What I would like to see worked out is some standards which the Congress could put its imprimatur on, could agree with you about, and that is what I would like to explore with you now.

You would prefer, I take it, S. 172 to nothing?

Mr. MOYER. We would prefer some clarification that would permit us to act responsibly and in the public interest, which is your goal as well. I am not sure that——

Senator SPECTER. Well, I will not reask the question which you have not answered. Instead, Mr. Tagliabue, would you like to answer that question? Would you prefer S. 172 to nothing?

Mr. TAGLIABUE. Yes, I think we do, Senator, because it does clear up some of the things that are currently unclear.

Senator SPECTER. Fine. All right, now, you do not like S. 172—or let me rephrase it. How would you like to change S. 172 by adding some other standards, because I am flexible about that?

Would you like to add some other standards or change some of the standards? I have tried to make S. 172 very simple.

Mr. TAGLIABUE. I can answer that. I appreciate that and I think that we would be glad to work with you to suggest other criteria that could be considered.

Senator SPECTER. Suggest them.

Mr. TAGLIABUE. Well, one of them would be to consider the revenues of the team and not whether it is losing money or making money.

Senator SPECTER. How would you articulate that?

Mr. TAGLIABUE. Well, you would articulate that the way Senator Danforth has, which is to say that you consider the home revenues of the team generated locally in its home area in relation to median and average revenues within the League. Profit and loss is not all that important.

Some owners can lose money—perhaps Mr. Trump could—for many, many years, and that does not entitle them to move and it does not mean that the community is not supporting the team. It means that they are paying players million-dollar contracts or that they have wealthy investments in other businesses and they can afford to lose money.

So losing money in this particular context may not indicate that a team should be able to move. So I would deal with it in terms of revenues, which has more to do with attendance and ticket prices and season ticket sales, and so on.

Senator SPECTER. Anything besides revenues?

Mr. TAGLIABUE. Yes; there are a number of them, as I say, that Senator Danforth and Senator Gorton have articulated. One of them that Senator Gorton has articulated is whether the owner of the team himself has contributed to conditions which have brought about a decline in the playing field performance of the team.

Senator SPECTER. Do you oppose Senator Gorton's bill because it mandates the specific franchises?

Mr. TAGLIABUE. We oppose the mandated expansion and we oppose taking the decision and putting it with an outside arbitration board, but we do not oppose the articulation of standards that are sensible in the context of the business. And yours are adequate for starters; I do not criticize them as such.

I think they should be added to so that you can get a realistic view. One of the basic problems I have with your set of standards—and I will call them yours, the standards in S. 172, and I know that other Senators had similar bills—is that they really only look at a snapshot in time and they really only look at how a team has done in the most recent 3 years in a business which is cyclical in the nature of things.

Teams go up and down on the playing field because players come and go, and I think a broader view and some standards which capture more than just a cyclical snapshot in time when a team may be experiencing a down cycle is important.

But, anyway, we would be glad to work with you and other Senators to discuss standards.

Senator SPECTER. All right, let us pursue that, then. We need not do that here. Does either S. 259 or S. 287 give you an antitrust exemption?

Mr. TAGLIABUE. They do not do it directly. I think the intention clearly is, as stated by the sponsors, to eliminate the conspiracy exposure under the antitrust laws.

Senator SPECTER. They do not do it directly. Do they do it?

Mr. TAGLIABUE. The sponsors argue that they do it by implication. We do not think they do that because of the law on repeal by implication. They have also said they would work with the Judiciary Committee in an effort to resolve that ambiguity.

Senator SPECTER. So you are not satisfied with S. 259 or S. 287 in terms of dealing with the antitrust problems, which is the core of your concern?

Mr. TAGLIABUE. Right. Our testimony on Monday made it clear that we do not think that is an adequate antitrust resolution of the issue.

Senator SPECTER. That may involve some of the same competitive factors which exist between other leagues and other committees.

Mr. TAGLIABUE. I appreciate that. I would like to make one final point on your question about majority vote, if I may. If you want to move on, I will be glad to hold what I have to say.

Senator SPECTER. Go ahead.

Mr. TAGLIABUE. We offered to the judge in Los Angeles—after he had this language in his opinion about a majority vote, we offered to deal with the Raiders move on a majority vote, and we asked him to amend his injunction to allow us to have a meeting and to vote on the Raiders move on a majority vote.

And the answer from the court was, no, thanks; the injunction stays in force. You cannot have your meeting.

Senator SPECTER. Mr. Tagliabue, I understand that, and you and I have discussed that before. But it is a very different thing to have that kind of a suggestion made after an injunction has been issued as opposed to having standards in advance which govern all transactions; to tailor-make a modification to cure a loss in a case.

Mr. TAGLIABUE. Well, I understand that and I want to make one more point which I think is responsive to something you asked.

Senator SPECTER. OK.

Mr. TAGLIABUE. The reason for a three-quarters vote in a sports league is the same as the three-quarters vote in most law firm partnerships, many business partnerships, and most corporations.

Senator SPECTER. Any held violative of the antitrust laws?

Mr. TAGLIABUE. Well, oddly enough, they are not, and that is the analogy here. But the reason is——

Senator SPECTER. Have they been challenged?

Mr. TAGLIABUE. Not in the law firm partnerships that I know of.

Senator SPECTER. The law firm partnerships were challenged.

Mr. TAGLIABUE. They were challenged at the turn of the century and the Supreme Court said it was not a problem. But the reason, Senator, is to have the enterprise operate with a true consensus of the members and not under the pressure of a group that really does not reflect the true consensus, and that is true throughout the business world in all kinds of corporations, all kinds of partnerships.

In a sports league, it is also important because you have clubs that are less well situated than other clubs who, on a pure majority vote, could be severely disadvantaged by having rule changes made and other things done within the league that disadvantage the have-nots in the league. So there are lots of reasons which we could also explore with you.

Senator SPECTER. Let us move on just to the Philadelphia situation at the moment and to what is occurring there. Mr. Moyer, do you not think the National Football League has some significant responsibility to the city of Philadelphia for what has occurred here and the tremendous commitments, ranging into $30 million, which have been made by the city to avoid the immediate flight of the Eagles from Philadelphia to Phoenix last December?

Mr. MOYER. No, Senator, I do not, for a number of reasons. Perhaps the major reason is the discussion we had earlier on the myth of the easy answer. We put our necks out on the line in the *Raiders* case.

We were told, no; the antitrust laws require each team to be an independent business competitor of each other team. And it was widely predicted, and it was predictable,, that there would be auction bidding; there would be this attempt from then on to have cities and teams play off against each other, as you have seen on several occasions since.

That we view as a terrible and an unfortunate, but an inevitable result of the court of appeals liability decision in the *Raiders* case. It is not a decision that we made.

Second, you have to recognize that no one in the NFL was a party to whatever discussions were occurring between Mr. Tose on the one hand and Mayor Goode on the other. We filed suit; we bit the bullet.

On the 14th of December, which I believe was a Friday, we filed suit to confirm the league's right, despite the *Raiders* case, to analyze the move. The discussions between the club and the mayor continued and culminated thereafter.

We took the step, and whatever was done by the city was done with knowledge that we had. Now, how that lays responsibility off on us——

Senator SPECTER. Do not say thereafter as if it were a long time; it happened the next day. It may have been in process.

Mr. MOYER. But we were not a part of that process, Senator. We were not knowledgeable about that process.

Senator SPECTER. Well, you were not uninvited.

Mr. MOYER. I beg your pardon?

Senator SPECTER. You could have been; you were invited.

Mr. MOYER. I am not aware that the National Football League was invited to participate in those discussions at any point.

Senator SPECTER. You received calls from city officials, Mr. Rozelle did. You were kept apprised.

Mr. MOYER. Mayor Goode, as I understand it—and Mr. Rozelle could speak to this better than I, but as I understand it, Mayor Goode may have called several times to express his concern and simply indicate that he was talking with Mr. Tose.

Senator SPECTER. Well, I think it is an oversimplification and somewhat misleading, Mr. Moyer, to say that the city concluded the deal after you had filed suit in a context where the transaction was ongoing and you filed suit on Friday, the 14th, and arrangements were concluded on the 15th.

And I think it is also not a full picture to say that you were not a party to the transaction when I do not know if you were specifically invited, but I have a hunch you were. You were certainly welcomed, or you did not volunteer to come in to help out, did you?

Mr. MOYER. Senator, we helped out by taking the biggest step we could have taken, which was to file suit in the wake of the *Raiders* case and all the danger that that puts us in, to keep faith with the community of Philadelphia, where the Eagles have been well supported for 50 years.

Senator SPECTER. Did the National Football League volunteer to come into the negotiations with the city officials of Philadelphia and the Eagles?

Mr. MOYER. The National League did not do so because the National Football League was not aware that there were substantive negotiations that would result in what, in fact, resulted. But what resulted, Senator——

Senator SPECTER. Now, wait a minute. The National Football League was not aware of substantive negotiations between the mayor of the city of Philadelphia and the Eagles owners?

Mr. MOYER. We were aware that they were talking, Senator, but we were not kept abreast of the specific items or the money significance of them.

Senator SPECTER. You were aware that there were substantive discussions. What did you think they were talking about?

Mr. MOYER. Well, for all I know, Mayor Goode could have tried to mollify Mr. Tose in a number of ways, some of which may or may not have had financial significance. And he might also have said to him, "Leonard, if you try to leave, I am going to slap a lawsuit on you because you breached the lease," which, in fact, he said publicly.

Senator SPECTER. Well, that may be for all you know, but did you inquire?

Mr. MOYER. I was having no personal discussions with the people in Philadelphia.

Senator SPECTER. Well, did the National Football League inquire?

Mr. MOYER. I am not aware of the precise content of the discussions between—the few phone calls between Mayor Goode and Commissioner Rozelle.

Senator SPECTER. Well, that is why we invited the commissioner here today, Mr. Moyer, but I do not think it is even plausible to suggest that the commissioner did not know that the city of Philadelphia was making major financial concessions to the Eagles owners. It is not plausible.

Mr. MOYER. I think it is not only plausible; I think it is an absolute fact that he did not know it.

Senator SPECTER. Well, I would like you to get a statement from Commissioner Rozelle to that effect because I do not think that is so.

Mr. MOYER. Well, I will have a communication directed to you, Senator, that will outline the full extent of Commissioner Rozelle's conversations. We will be happy to do that.

But do you really think, Senator, that there is equity in suggesting that the people of Pittsburgh or the people of Kansas City or the people of Green Bay, and so forth, should pay for the city of Philadelphia's concessions to the Eagles—teams that are in far less advantaged circumstances than the teams in the larger communities, teams that would have to bear those costs? Is there any real fairness in that?

Senator SPECTER. I will be glad to answer your question. Yes. I think that when you say there was no simple answer that you may be correct, but there could be some answer or there could be some effort at an answer. And the National Football League did promulgate some procedures, I believe you said, after the Eagles were about to move to Phoenix.

And I think that there were things that you could have done in advance of the crisis that afflicted the Eagles that you did not do. And I think that the National Football League and Green Bay and the other teams profited enormously by revenue sharing which has been paid for by the Philadelphia Eagle fans.

And you got that antitrust exemption by coming to the Congress, and I think that there are some things that the league could have done. And I talked to Commissioner Rozelle at a time when he was discussing the matter with Mayor Goode, and I talked to Mayor Goode.

And I believe it is incredible to say that Commissioner Rozelle did not know that the city of Philadelphia was making significant financial concessions to the Philadelphia Eagles. There is no way that Commissioner Rozelle could not have known that.

And when the National Football League filed a lawsuit, it did something but not much, and it did not subject itself to any enormous problems in filing the lawsuit which it filed, notwithstanding your suggestion to the contrary. And I think the National Football League has dealt very unfairly with cities like Philadelphia.

And you have gone through and you have categorized Mr. Cosell's testimony as distortions and outright misinformation, and then you quote Business Week and then you refer to Buffalo and the Vikings.

But I would ask you, in the context of what Mr. Irsay did or what Mr. Tose did, is the categorization of blackmail or extortion wrong?

Mr. MOYER. Senator, I do not like to use or acquiesce in the use of terms as harsh as those.

Senator SPECTER. Then say no.

Mr. MOYER. What I will tell you, Senator, is that were it not for the cocked hat into which the law in this area was knocked by one court decision, those circumstances undoubtedly would not have arisen.

Mr. TAGLIABUE. Senator, may I say something here which I think is relevant?

Senator SPECTER. Sure.

Mr. TAGLIABUE. In the *Raiders* case, the commissioner attempted to meet with the mayor of Oakland. He scheduled a meeting at the request of Oakland community officials with them to see if he could help out in the negotiations.

Al Davis told the Oakland officials he would not negotiate with them if the commissioner came into the process, and we were pilloried in front of the jury for week-in and week-out on the basis that we were butting into a negotiation process and a business decision which was the unilateral decision of the club.

And we paid $50 million for volunteering our way into negotiations with mayors and community officials, and I think that has to be considered when you consider whether we should have volunteered our way into another round of such negotiations.

Senator SPECTER. Did Mr. Davis object to your participating with the Oakland officials?

Mr. TAGLIABUE. He said he would cancel the meeting and would not further negotiate.

Senator SPECTER. OK. Did Mr. Tose object to your participating in the discussions with the Philadelphia officials?

Mr. TAGLIABUE. When you are in front of a jury, it is too late to ask.

Senator SPECTER. My question to you was, Did Mr. Tose object to your participating in discussions with the city of Philadelphia?

Mr. TAGLIABUE. He did not invite us in.

Senator SPECTER. Now, answer my question.

Mr. TAGLIABUE. I do not know whether he objected.

Senator SPECTER. OK; I would like to find out.

Thank you very much, gentlemen.

Senator Grassley, you have joined us. Do you have any questions?

Senator GRASSLEY. No questions or comments.

Senator SPECTER. OK. Thank you very much.

[The prepared statement follows:]

STATEMENT OF JAY MOYER

for the
National Football League

Mr. Chairman and members of the Committee, I am Counsel to the Commissioner of the National Football League, and I am pleased to present the views of the NFL concerning the issues of franchise stability now facing sports communities, fans, leagues, and teams.

Your Committee has two bills before it: S. 172, the Professional Football Stabilization Act of 1985, sponsored by Senator Specter; and S. 298, the Sports Community Protection and Stability Act, sponsored by Senator DeConcini.

In addition, other bills dealing with these issues have been introduced in both the Senate and the House of Representatives. Two such bills have been referred to the Commerce Committee: S. 259, the Professional Sports Community Protection Act of 1985, co-sponsored by Senator Danforth and other members of the Senate; and S. 287, the Professional Sports Team Community Protection Act, co-sponsored by Senator Gorton and others.

It is difficult to convey the full measure of our frustration over the problem that prompts these various bills. We are in a situation where, while the League has sought to follow federal policy as urged by the Congress, recent court rulings have found the League in violation of federal law as interpreted by a divided Court of Appeals' panel, in a split 2-1 decision, in the Raiders' litigation. Subject to pending appellate review, the League has thus been penalized in excess of $50 million in trebled damages for attempting to keep a well-supported team in its agreed home territory. Other sports leagues face similar challenges for similarly trying to respect the policy of team-community stability. This is an unusual "reward" for trying to do what the present bills would require or authorize sports leagues to do. So we are no strangers to your concerns. We have paid a heavy price for trying to uphold the principle on which the present bills are based.

Each of the bills currently before committees of the Senate is intended to protect communities, in one way or another, from abandonment by sports franchises when the case for a relocation is not clear. At the same time, there are substantial differences among the several bills -- in their general approach, in the degree of government control they would impose on the sports entertainment marketplace, and in the specific procedures proposed to control future decision-making on the location of sports teams.

We cannot be certain at this stage whether any legislation will ultimately be regarded as necessary or warranted. However, in evaluating proposed legislation, several fundamental considerations seem clear to us:

1. Legislation should avoid making these team movement issues more complex or confused than they now are. The basic need is for the elimination of confusions and risks -- to communities, fans, and leagues -- that recent court rulings have created.

2. Legislation should deal directly with the source of the problem, the status of sports leagues under the antitrust laws. It should clarify that status, and do so in narrow, well-defined ways.

3. Legislation should recognize that the stability of sports league operations -- including stability in franchise locations -- depends on many factors and practices, such as revenue sharing among league members, that promote stability.

4. Legislation should recognize that sports leagues are best suited to manage the operations of their sports under their voluntary joint venture agreements, that leagues themselves have a strong interest in franchise stability, and that there is little or nothing in recent sports league history to warrant governmental control or direction of sports league operations.

Of the two bills before your Committee, S. 298 is, in our view, plainly the preferred approach. In past sessions of Congress, an equivalent bill received the strong endorsement and support of dozens of mayors and other public officials, and we believe that S. 298 again merits serious consideration by the Congress.

S. 298 is a narrow piece of legislation that will reform and make rational the application of our antitrust laws to professional sports in two very basic, limited, and specific ways.

First, S. 298 would confirm the right of a sports league to maintain a team in its current home territory. Under league operating agreements, league members voluntarily agree to operate in designated home territories, and S. 298 thus merely validates agreements accepted by league members at arms-length.

The bill is a one-way street. Under this legislation, leagues would have no greater privilege to relocate teams than they have today.

Second, S. 298 would confirm the right of sports leagues to continue to provide for the division of league or club revenues in a manner that tends to reduce financial disparities among the clubs. This provision would reconfirm practices that have made it feasible to establish and preserve professional football in small and mid-sized communities across the country. The NFL's long-standing revenue sharing policies now produce a division of some 95 percent of the total revenues the League generates. Congress and even long-time critics of the League have warmly and repeatedly endorsed these practices and urged them on other leagues.

Revenue sharing is also the central factor that has made it feasible for the League to grow from 12 to 28 teams over the last 25 years. Without it, future NFL expansion would be difficult, if not impossible, for an NFL club could not generate sufficient revenues to operate in any likely expansion community unless it annually received a guaranteed allocation of currently shared League revenues. Revenue sharing is thus the key to maintenance of geographic balance and team stability in the NFL, and is therefore an essential part of any sports-antitrust bill.

In addition to being limited to these two specific matters, S. 298 expressly provides that it does not apply to player employment or collective bargaining matters or to any conduct with respect to a competing sports league.

Team Stability In The NFL

Throughout the 1960's and 1970's, the location of NFL teams was settled. Teams were, in fact, committed in their home territories on a stable basis, and Congress supported League policies in this respect. It then seemed clear legally that if a league were to act on a proposed club relocation, it was acting lawfully and as a single business enterprise. This was so because, as the leading academic commentator has put it, decisions on team location within a league are "essentially internal marketing decisions" of the league venture as a joint enterprise.

Neither the NFL nor other leagues created the current problem of franchise "free agency." It has arisen, instead, from the recent inability of leagues, under current judicial interpretations of federal law, to pursue traditional policies on franchise stability.

During the NFL's entire history, no well-supported club had ever been permitted to abandon its home community and fan base -- until court decisions in the Raiders' case stripped the NFL of any practical ability to deal with the Baltimore Colts' relocation issue during 1984.

The NFL's interest in franchise stability has been strong and consistent through the League's modern history -- for sound league partnership reasons. Public respect for the League is vital to us; traditional regional and inter-city rivalries are important to us; and community support and public investments in stadiums and related facilities are important to both the League and communities.

Nonetheless, there have been self-serving suggestions by some, including self-appointed media "experts," that the NFL's concern for community and fan interests is of recent origin. Such statements ignore the League's consistent record of franchise stability. They also ignore what the League has said -- and done -- for more than two decades on the subject.

In 1966, for example, when the issue of team stability was raised in connection with the "merger" of the NFL and the American Football League, the NFL assured Congress that no teams would be moved from their existing territories as a result of that consolidation of the two leagues. Similarly, in the early 1970's, when Commissioner Rozelle was questioned on national television about the League's position regarding a possible Colts' move from Baltimore, he stated that he did "not expect any team to leave its present franchise area, hopefully ever, but certainly for many, many years." He further stated with respect to the Colts:

> "I know that the [Colts] are talking about training in Tampa . . . this coming summer and playing some pre-season games there. But, with the interest in the Colts in Baltimore and the interest on the part of the State of Maryland in having them stay there, I do not feel that the Baltimore Colts will leave the Baltimore area. . . ."

Subsequently, in the late 1970's, when the current owner of the Baltimore Colts contemplated relocating that team outside of Baltimore, the League again would not support the transfer, because the Colts were highly successful on the field and well supported by their fans.

As another example, in the early 1970's the League discouraged a relocation of the Buffalo Bills and urged that club to secure improved facilities in the Buffalo community. At that time, the Bills were operating in an inadequate stadium, built by the WPA in the late 1930's; the stadium had originally had a capacity of less than 25,000 and, despite expansions, had the smallest capacity in professional football -- just over 40,000. Parking and other fan accommodations were inadequate. Rather than authorize a Bills' transfer to the Pacific Northwest, the League required the Bills to make every effort to remain in Buffalo, and the Bills made major financial commitments toward construction of the stadium while also committing to remain as a tenant for 25 years. Buffalo area officials today regard that stadium as one of the finest in the nation, and also regard the arrangements for the Bills' use and operation of the stadium as among the most favorable for any public authority in the nation.

More recently, the League worked with community and state officials in Minnesota to assure the continued operation of the Minnesota Vikings in the Twin Cities rather than authorize a relocation of that club. Through the joint efforts of many parties, including the League, a multi-purpose stadium, the Hubert H. Humphrey Metrodome, was constructed in downtown Minneapolis. As a phase of that project, the NFL itself made commitments regarding continued operation of a League franchise in Minnesota for the next 30 years.

Further, under the Vikings 30-year commitment to the Metrodome, the Vikings agreed to operating terms that would fully amortize the costs of the new stadium. I understand that the Vikings' use of the stadium will generate for the stadium authority some $160 million through direct and indirect payments, while substantially less than that (approximately $135 million) is required to retire the stadium bonds. Other NFL teams similarly have committed to long-term stadium arrangements that provide public authorities with the revenues necessary for debt service and retirement of stadium bonds.

A review of NFL decisions on team location demonstrates, in short, both a responsible NFL policy and a consistent policy in favor of franchise stability. Since 1960, virtually all NFL clubs have begun play in new or significantly improved stadiums, most of which have been built or improved at least partially with public financing. As a result of this wave of stadium construction in the past two decades, nineteen NFL teams have changed their operations from one local stadium to another during this period -- generally within the city limits. Several of these new stadiums have been in suburban locations, such as Texas Stadium in the Dallas suburb of Irving. But the NFL had not permitted any well-supported member club to abandon its home territory, to walk away from its fans, or to ignore public investments in an unpaid-for stadium built especially for professional football.

What the NFL's policies reflect is that the relationship between a major league sports franchise and its city or metropolitan area must be a mutual or a two-way street relationship. In cannot be a one-way proposition -- in either direction. The relationship requires mutual responsibility and provides for mutual benefits. It requires mutual accommodation and a mutual respect for the interests of the other. A sports franchise's careless disregard for loyal fan followings and community interests should not be condoned. But a failure by local authorities to meet the situation half way can also produce inequities -- if franchises are expected to function for an extended period with inadequate facilities, inadequate support from fans or local authorities, or inadequate returns.

The Current Antitrust Chaos

The recent court decisions in the Raiders' case have knocked the law into a cocked hat and, subject to further appeals, saddled the other 27 NFL clubs with an enormous treble-damage liability for trying to respect and return the loyalty that fans and communities have shown to well-supported franchises such as the Raiders.

While the current bills do not apply to the Raiders' case, the current problem is rooted squarely in that case. When the Raiders decided to move to Los Angeles, the objective realities of the Raiders' operations were clear: they had profits in the two preceding seasons averaging almost $2 million; they had the third highest ticket revenues in the entire League; and they had sold out every game in Oakland for 12 straight seasons. Their publicly-financed stadium, built by the Oakland-Alameda community especially for the Raiders, had annual debt service costs of $1.5 million through the year 2006.

In May 1982, a jury sitting in Los Angeles concluded that the Oakland Raiders should become the Los Angeles Raiders. The implications of that ruling for communities across the United States were widely recognized. For example, an experienced New York Times sports writer stated that the auctioning of franchises would become commonplace in the wake of the Raiders' ruling, stating in an article entitled "NFL Franchises Now Free Agents":

> "With this precedent, Robert Irsay, who has often threatened in recent years to lift the Colts out of Baltimore, could invite the civic leaders of Memphis, Indianapolis, Birmingham, Phoenix and Jacksonville to an auction for his franchise. And there would be nothing to stop Montreal from bidding, or even Tokyo.
>
> "But the Colts are merely the most obvious team likely to be awarded to the highest bidder after being romanced by mayors, governors, senators and congressmen who have a stadium to fill."

A year ago, in February 1984, a split panel of the United States Court of Appeals, in a 2-1 decision, upheld the trial court's interpretation of the antitrust laws in the Raiders' case as well as the jury's verdict. That ruling has created legal chaos and, at least, a legal vacuum with respect to the relocation of teams.

The dissenting judge in the Raiders' case emphasized the sweep of the majority's ruling. He stated that, taken to its logical limits, the ruling means that the NFL "may not enforce any collective decision of its member clubs over the dissent of a club member" and "is tantamount to ruling that the NFL's structure is itself per se invalid under the Sherman Act § 1 . . . ." The dissenting judge, in short, read the majority opinion as implicitly creating antitrust uncertainties on matters far beyond team movement issues and in ways that could not be resolved merely by adopting new or different procedures within leagues for dealing with team movement questions.

The Baltimore Colts' situation arose in 1984 in the immediate aftermath of the Court of Appeals' decision in the Raiders' case. At that point, we planned to seek an early clarification from the Supreme Court, and our clubs understandably felt they had "given at the office" since their "reward" for attempting to preserve stability in the Raiders' case was a $50 million treble damage penalty. The League thus took no action, one way or the other, on the Colts' relocation.

In the wake of the Colts' move, increasing concern was expressed by mayors, members of this Committee, leagues themselves, and others in Congress. Many began to suggest that new rules were needed to restore franchise stability if the courts could not or would not clear up the confusion. There was, however, nothing approaching a consensus on what those rules should be -- and no one was offering any guarantee that any particular rules would be legally acceptable and insulate leagues from further enormous treble damage risks for seeking to preserve existing relationships.

In addition, suggestions were made that revised league voting procedures -- particularly for majority voting -- would solve the legal problems. But there are many clear deficiencies in such suggestions. For one thing, such a watering down of league requirements could produce team moves without any true league consensus on the matter and would, in any event, encourage instability by facilitating moves. Moreover, while such suggestions arose from loose language in an opinion of the trial judge in the Raiders' case, that judge himself rejected a League request that the League should be permitted to evaluate the Raiders' move on a majority vote basis. Further, many courts have frequently ruled that the antitrust laws in no way require businesses to adhere to particular procedures or other parliamentary ground rules.

In recent months, there have been two further developments. First, the Supreme Court declined last November to take the Raiders' case -- at least at its present interim stage, with the damages and other issues still pending in the Court of Appeals. So any judicial clarification will have to await other possible further rulings in the Raiders' case or developments in other litigation in the NFL or other professional sports.

The second development, last December, involved the Philadelphia Eagles, a well-supported NFL club with 50 years of history reportedly leaving the country's fourth largest market for Phoenix where the United States Football League already had a franchise. At this point, with the trickle threatening to become a flood, Commissioner Rozelle strongly recommended to the NFL's members that they had to take a principled stand despite the severe risks generated by the current legal confusion.

So the League did two things. First, we sued the Eagles to confirm the League's right to evaluate a proposed franchise move in concrete terms. At that time, the Eagles, with knowledge of the court rulings in the Raiders' case, apparently intended to take the position that they would neither inform the League of any plans to relocate to Phoenix nor seek League approval for any such relocation. By filing suit against the Eagles, the League promptly acted to assert that any unilateral Eagles relocation from Philadelphia would be unauthorized and a breach of the Eagles' NFL franchise agreement. Thereafter, the City of Philadelphia and the Eagles concluded certain revised lease terms and other financial arrangements for the Eagles to remain in Philadelphia. Neither the NFL itself nor any League member other than the Eagles participated in the negotiation of these arrangements. The Eagles have since entered into a court-approved agreement with the League to remain in Philadelphia while the League and the Eagles seek to stabilize the club's financial operations.

Second, in late December, Commissioner Rozelle implemented League-wide policies and procedures applicable to future League consideration of any proposed franchise moves under the League's Constitution and By-Laws. These procedures require, among other things, that any club proposing to relocate must address in a timely fashion the specific reasons for its relocation and justify any relocation according to specified factors bearing upon League, club, fan, and community interests. A copy of that policy memorandum is attached to this statement.

These procedures are similar to what the League in fact attempted to do in the Raiders' case. They are designed to produce a sound business judgment, and to assure fair consideration of all the competing interests in addition to the needs of the club involved. The major change here is that we are simply "billboarding" our procedures in advance. Whether this will make a difference legally is anyone's guess -- like most aspects of antitrust law in sports.

More recently, there has been public discussion and speculation about possible moves by both the St. Louis Cardinals and the New Orleans Saints. Both clubs have formally notified the League that they do not consider themselves bound by League requirements. Both clubs' positions are bottomed squarely on the Raiders' case rulings. In addition, like the NFL, the National Basketball Association is currently confronting a claim by one of its members that the Raiders' case rulings negate any league ability to even consider, much less act on, an individual team's unilateral desire to relocate.

The root of the current legal confusions is not the fact that the antitrust laws apply to sports leagues; it is the way those laws are sometimes applied. The federal courts have often recognized, as one court of appeals put it, that "the NFL clubs . . . are not competitors in an economic sense. The clubs operate basically as a joint venture . . . ." The Ninth Circuit majority in the Raiders' case recognized this, stating that "the NFL teams are not true competitors, nor can they be." But having acknowledged this reality, the majority ignored it and applied to the NFL clubs the same antitrust principles that would apply to joint action by routine, wholly independent business competitors. While the two-judge majority in the Raiders' case talked about what might be done with "standards" for team moves, it made no rulings on the point -- and whether other courts, or even other judges on the Ninth Circuit, would agree with those views is totally speculative.

Until the law is clarified -- by the Supreme Court or by the Congress -- the confusion will remain. Leagues will continue to be subject to after-the-fact second-guessing and enormous treble-damage penalties by courts and juries in partisan locations on team location matters. They will be damned if they do and damned if they don't -- subject to heavy damage suits if teams are permitted to move and to heavy damage suits if teams are not permitted to move. Currently, so-called "standards" and procedures present just another set of unresolved legal issues, and just another license for a disgruntled team or other parties to file antitrust treble damage claims.

The need for clarification in the application of the Sherman Act to agreements within sports leagues is well-illustrated even by the opinion of the Ninth Circuit majority. It explicitly conceded that professional football is "an industry which does not readily fit into the antitrust concept." The majority also observed that while the purpose of Section 1 is to prohibit agreements among competitors, it nonetheless applies to the NFL even though ". . . the NFL teams are not true competitors, nor can they be." The majority further described the NFL as a "unique organization to which it was difficult to apply antitrust rules developed in the context of arrangements between actual competitors." In short, both the majority and the dissent acknowledged the inappropriateness of existing antitrust precedent to a league situation.

While the courts have struggled with agreements among professional league members, commentators have urged a clear-cut recognition that certain league agreements cannot be tested under standard "conspiracy" concepts. For example, Professor Robert Bork, now a judge of the Court of Appeals for the District of Columbia Circuit, observed some years ago that "the concept of business competition may be irrelevant as applied to the relationship between members of a league." The leading academic treatise also recognizes that the inherent "jointness" of professional sports leagues makes it inappropriate to subject leagues to conspiracy "principles designed to control the behavior of firms which are fundamentally different. In its basic nature, a league-firm is not a conspiracy. To treat it as such is to force results which are unlikely to achieve any purpose intended by Congress."

The Elements Of Legislation

Certain essential ingredients of any legislative solution thus seem evident.

First, legislation must recognize that internal league agreements on team location, particularly when they operate to preserve a team in its home community, are not "conspiracies" under Section 1 of the Sherman Act. Policies and procedures such as we have implemented within the NFL provide assurance that all interests will be fully and fairly considered in any League decision-making on team location matters.

Legislation need not in any way affect the application of Section 2 monopolization principles to sports league operations.

Second, legislation should recognize the right of leagues to enforce internal agreements, such as revenue sharing, that promote league stability. The NFL's ability to conduct operations on a nationwide scale in communities of vastly differing economic potential, and its ability to insist upon team-community stability, are directly tied to the League's "partnership" structure and its revenue-sharing agreements. Where League-wide revenues are broadly shared, as in the NFL, the potential advantages of the clubs in the largest markets are to a large extent minimized by their own sharing of revenues with the clubs in smaller and medium-sized markets. No businesses other than sports leagues possess these co-production, revenue sharing, and joint enterprise features.

In our judgment, S. 298 provides a sound starting point for this Committee's evaluation of these sports league issues. It authorizes professional sports leagues to keep well supported teams in their existing home territories, and involves no license for leagues to relocate well supported teams.

We also support the revenue sharing provisions of S. 298. Revenue sharing is the most effective means of preserving the geographic stability of a league. It has been the economic base for past NFL expansion. Revenue sharing is critical to the survival of teams in smaller communities and serves to avoid financial pressures for team moves before they occur. NFL teams in smaller communities, such as Cincinnati, Green Bay, Kansas City, St. Louis, or Atlanta, are thus able to operate with a comparable revenue base and to compete on the playing field with teams from the larger metropolitan areas.

We understand that the revenue sharing provision of S. 298 would not make any change in any law concerning sports league player-employment or labor-management matters. S. 298 itself specifies that no changes are made in any federal law with respect to such matters. The revenue sharing provision deals solely with revenue sharing arrangements among league members. It has no effect, to our understanding, on any question of revenue or profit sharing, or any similar subject, that might be a matter for collective bargaining with a players' union in professional sports.

Within the framework of S. 298, sports leagues can fairly operate with appropriate attention to concrete factors or criteria bearing upon team move issues. Financial and other factors of this type that the League has traditionally applied are identified in the NFL's policy memorandum attached hereto. But no single or exclusive set of factors or "standards" can adequately deal with the variety of team relocation situations that sports leagues may confront. Many factors may be pertinent, as is illustrated by the listing of factors set forth in S. 259, sponsored by Senator Danforth and others and referred to the Commerce Committee. And leagues must be entitled to evaluate all pertinent factors, not a rigid and exclusive set of factors, in making their business judgments on team location matters. "Standards" should, in short, be part of a sound framework, not a straitjacket.

In this respect, we find S. 172 to be inadequate. Although it contains "standards" for team moves, those provisions are not likely to assist communities or leagues in dealing with team location issues. Several aspects are troublesome. For one thing, the "standards" do not focus on the basic ability of a community to support a professional sports team. The key factors determining whether a community can support a team involve relatively constant circumstances. These include population, purchasing power in the community, and other such "demographic" factors, as well as public investment of funds for construction or modernization of facilities, demonstrated public interest in sports, and so forth. Another key factor is the degree of revenue sharing within a league, as already noted. Yet the standards of S. 172 do not give weight to such factors. Instead, the standards merely refer to a team's particular situation in a given time frame -- which may not be representative of the team's long-run experience, its future prospects, or the overall ability of a community to support a team.

In short, we concur in S. 172's goal of preserving stable team-community relations, but question its reliance on an inflexible set of standards as opposed to responsible league decision-making. Further, we are troubled by the bill's silence on the critical issue of revenue-sharing and by its application to the NFL alone among sports leagues. In sum, we believe that a simple, straightforward clarification of the antitrust laws, such as is embodied in S. 298, is clearly the preferable approach.

Mr. Chairman, again, we thank you and the Committee for its interest in these issues.

THE NATIONAL FOOTBALL LEAGUE

410 PARK AVENUE NEW YORK, N.Y. 10022 • PLaza 8-1500

December 21, 1984

MEMORANDUM TO: NFL Club Presidents

As noted at last Tuesday's League meeting, Article 8.5 of the NFL Constitution and Bylaws vests in the Commissioner the authority to "interpret and from time to time establish policy and procedure in respect to the provisions of the Constitution and Bylaws and any enforcement thereof." This memorandum establishes procedures and policy to apply to League consideration, pursuant to Section 4.3 of the Constitution and Bylaws, of any proposed transfer of a home territory. As stated at the League meeting, these provisions are effective immediately.

A. Notice and Evaluation of Proposed Transfer

Section 4.3 requires prior approval by the affirmative vote of three-fourths of the member clubs of the League (the normal voting margin for League business) before a club may transfer its franchise or playing site to a different city outside its home territory. Thus, before any club may transfer its franchise or playing site outside its home territory, the club must submit a proposal for such transfer to the League on the following basis:

1. A club proposing to a transfer outside its home territory must give written notice of the proposed transfer to the Commissioner no later than January 15 of the year in which the club proposes to commence play in a new location. Such notice will be accompanied by a "statement of reasons" in support of the proposed transfer that will include the information outlined in Part B below.

2. The Commissioner will, with the assistance of appropriate League committees (e.g., Finance Committee, Television Committee, Competition Committee, Long-Range Planning Committee), evaluate the proposed transfer and report to the membership within 30 days of his receipt of the club's notice and accompanying "statement of reasons." The Commissioner may also convene a special committee to perform factfinding or other functions with respect to any such proposed transfer.

3. Following the Commissioner's report on the proposed transfer, the transfer will be presented to the membership for action in accordance with the Constitution and Bylaws, either at a special meeting of the League held for that purpose or at the Annual Meeting.

B. "Statement of Reasons" For Proposed Transfer

Any club proposing a transfer outside its home territory must, in its accompanying "statement of reasons," furnish information to this office essential to consideration of whether such a move is justified and whether it is in the League's interest.

In this connection, the club proposing to transfer must present in writing its views as to why its recent financial experience would support a relocation of the club. Such information would include a comparison of the club's home revenues with League averages and medians; past and projected ticket sales and other stadium revenues at both the existing and proposed location; and operating profits or losses during the most recent four seasons. The club should also comment on any other factors it regards as relevant to the League's consideration of the proposed transfer, including but not limited to operations of other professional or college sports in the existing and proposed home territory and the effects of the proposed transfer on NFL scheduling patterns, travel requirements, current divisional alignments, traditional rivalries, League-wide television patterns and interests, the quality of stadium facilities, and fan and public perceptions of the NFL and its member clubs.

To permit such a review, at least the following information will accompany the "statement of reasons" for the proposed transfer:

1. A copy of the club's existing stadium lease and any other agreements relating to the club's use of its current stadium (e.g., concession agreements, luxury box agreements, scoreboard advertising agreements) or to a stadium authority's or municipality's provision of related facilities (e.g., practice facilities).

2. Audited financial statements for the club for the fiscal years covering the preceding four seasons.

3. An assessment of the suitability of the club's existing stadium, costs of and prospects for making any desired improvements to the stadium, and the status of efforts to negotiate such improvements with the stadium authority.

4. A description and financial analysis of the projected lease and operating terms available to the club in its proposed new home territory.

5. A description and financial analysis of the stadium lease and operating terms available to the club in its existing home territory, on a basis that permits comparison with the projected arrangements in the proposed new location.

6. A budget projection, using accepted League charts of account, showing a projected profit and loss statement for the fiscal years covering the first three seasons in the proposed new location.

Finally, while the League has analyzed many factors in making expansion and team-move decisions in the past, I will also give consideration to the attached listing of factors, among others, in reporting to the membership on any proposed transfer ouside a home territory. These factors were contained in a bill reported by a Senate committee earlier this year; they essentially restate matters that the League has considered vital in connection with team location decisions in the past. Accordingly, any club proposing to transfer should, in its submission to this office, present the club's position as to the bearing of these factors on its proposed transfer, stating specifically why such a move is regarded as justified on these standards.

Any club proposing to transfer will have a full opportunity to state its position to the membership and to make its case for the proposed transfer. In order fully to assess a proposed transfer in light of the variety of League interests involved, and to fairly resolve the interests of all parties, it is essential that the membership be fully apprised of the relevant facts with respect to any proposed transfer. The procedures and policies outlined above are directed to that end.

PETE ROZELLE
Commissioner

PR:bd
Attachment

ATTACHMENT TO MEMORANDUM OF DECEMBER 21, 1984

(1) the adequacy of the stadium or arena in which the team played its home games in the previous season and the willingness of the stadium or arena authority to remedy any deficiencies in such facility;

(2) the extent to which fan support for the team has been demonstrated during the team's tenure in the community;

(3) the extent to which the team has, directly or indirectly, received public financial support by means of any publicly financed playing facility, special tax treatment and any other form of public financial support;

(4) the degree to which the owner or management of the team has contributed to any circumstance which might otherwise demonstrate the need for such relocation;

(5) whether the team has incurred net operating losses, exclusive of depreciation and amortization, sufficient to threaten the continued financial viability of the team;

(6) the degree to which the team has engaged in good faith negotiations with members and representatives of the community concerning terms and conditions under which the team would continue to play its games in such community;

(7) whether any other team in its league is located in the community in which the team is currently located;

(8) whether the team proposes to relocate to a community in which no other team in its league is located; and

(9) whether the stadium or arena authority, if public, is not opposed to such relocation.

THE NATIONAL FOOTBALL LEAGUE

410 PARK AVENUE, NEW YORK, N.Y. 10022 • PLaza 8-1500

February 22, 1985

The Honorable Strom Thurmond
Committee on the Judiciary
Room 224
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Thurmond:

On behalf of the National Football League, I am enclosing written responses to the questions that you forwarded to me by your letter of February 8, 1985, as a followup to the Committee's hearing on February 6 concerning S. 172 and S. 298.

If we can furnish any further information in this respect, we will be pleased to do so.

Sincerely,

Jay Moyer

JAY MOYER
Executive Vice President
and League Counsel

JM:bd
Enc.

RESPONSES OF NATIONAL FOOTBALL LEAGUE TO QUESTIONS OF SENATOR STROM THURMOND

Q.1. How does the League determine whether to expand to a new city, and, if so, which one? What implications does the Ninth Circuit decision in the Oakland Raiders have in this area, if any?

Answer:

The NFL studies expansion prospects and possibilities as a league and makes decisions with respect to expansion through League committees acting on behalf of the membership. Specifically, the League office, under the direction of the Commissioner, has, in advance of past expansions, undertaken internal studies of the many issues that must be addressed whenever expansion is considered. The League has also directed that external studies of potential expansion sites be made by independent research organizations. For example, in preparation for its last two expansions, the NFL commissioned the Stanford Research Institute to analyze probable candidate areas with respect to certain of these factors.

In addition, the League has in the past operated with an expansion committee to undertake a careful review of the many considerations that must be evaluated in connection with any decision to add new operating units to a national business such as a major sports league. Recommendations of the expansion committee have, in turn, been made to the League's Executive Committee, consisting of one representative of each member club, which has made the final decision with respect to expansion of the League's joint business operations. In its most recent expansion, the League determined, after considerable study, that its interests were best advanced by placing new franchises in Seattle and Tampa Bay.

Expansion of the NFL, or of any sports league, is much more than simply the issuance of an operating license. Successful expansion requires that the existing League members, in return for franchise payments, establish the new members both with representative teams and as equal partners in all phases of the League's operations, including the full array of internal League partnership commitments a pro rata share of network television receipts, and League goodwill.

Responsible expansion therefore requires careful planning as well as consideration of a broad range of factors, including but not limited to the existing levels of on-the-field competitive balance within the League; the availability of football talent and the dilution effects of added teams; the current financial stability of the League's clubs; the state of labor relations within the League and the timetable for renewal of collective bargaining agreements with the players' union; the future prospects for television contracts and television revenues (which now represent some 60 percent of League-wide revenues); and other such factors.

The antitrust analysis of the split 2-1 decision of the Ninth Circuit panel in the Raiders' case raises serious impediments to NFL expansion. The decision creates serious questions regarding the future of joint league decisionmaking within sports leagues, since, carried to its logical limits, it threatens to invalidate the partnership premises on which leagues have operated. The decision puts at risk the NFL's ability to determine where its franchises will be located, and possibly the League's ability to guarantee the continued sharing of League revenues with expansion teams. Without clarification of such matters, it cannot be expected that any expansion program would be a prudent course of action.

Apart from the Raiders' decision, however, the Court of Appeals for the Third Circuit recently rejected an antitrust challenge to the NFL's refusal to admit a new member on demand. See Mid-South Grizzlies v. National Football League, 720 F.2d 772 (3rd Cir. 1983), cert. denied, 104 S. Ct. 2657 (1984). The Third Circuit's opinion offers some indication that, had it faced the question presented to the Ninth Circuit in the Raiders' case, it would have concurred with the conclusion of the dissenting member of the Ninth Circuit panel that joint league decisionmaking on matters such as team location presents no antitrust issue. However, it did not expressly reach that question.

Q.2. It has been suggested that extensive Federal involvement is appropriate in this area because of certain tax incentives which benefit professional sports. What is your view on this?

Answer:

The NFL believes that suggestions for direct federal involvement in, or control of, sports league decisionmaking on the basis of asserted preferential tax treatment reflect a misunderstanding of tax policy and would constitute misguided public policy. For example, the financing of facilities with tax exempt revenue bonds is available to many businesses in the United States, and professional sports are not unique in using facilities constructed with such financing. In addition, professional sports teams do not receive unique tax treatment making them especially attractive as investments. Congress reviewed the tax aspects of professional sports teams in 1976 and enacted unusual restrictive provisions that do not apply to other business, leaving professional sports teams less attractive in many respects from a tax standpoint than other types of investment.

Q.3. How can local communities best protect themselves against unpopular team relocations, particularly in their contracts?

Answer:

Communities should certainly make every effort to negotiate long-term use commitments or other protections in the leases they sign with their local sports teams. However, various circumstances sometimes make such commitments unattractive or unavailable. Communities have thus also found it necessary to look to league policies on team location in order to protect fan and community investments. Leases expire, as they did in Oakland and Baltimore, and a lease, like most contracts, can often be bought out. Moreover, individual clubs may seek to relocate in circumstances that violate club agreements with their leagues or for reasons that are in conflict with broader league policies and interests. In such circumstances, league agreements on the location of teams should be enforceable, and communities should be able to look to leagues for the enforcement of such policies.

Teams and communities need to recognize that their relationships both confer mutual benefits and impose reciprocal obligations. It is a two-way street, and neither can seek to dominate the other. For example, a recent study reportedly indicated that the professional sports teams in

Philadelphia contributed over $500 million to that city's economy. The relationship between teams and communities should be one of cooperation, with each showing sensitivity to the needs and interests of the other.

Q.4. There has apparently been some decrease in popularity of network football games. Is this indicative of a trend that may have implications for the antitrust questions we are considering?

Answer:

Network ratings for sports programming, including NFL games, are lower today than they have been in the past. It is presently uncertain, at least as to the NFL, whether this represents a trend or merely a temporary phenomenon. Nor is the cause of the drop in ratings easily determined, although competition from other forms of entertainment programming is likely a factor.

All NFL clubs are heavily dependent on national television revenues, which are shared equally. If television ratings were to decline, increased instability of teams in the NFL might be expected. Any legislation that ignored the current and anticipated financial prospects of sports leagues and the competitive entertainment pressures faced by the NFL and other leagues would be unrealistic and unworkable.

The dependence of the NFL clubs on shared revenues underscores the need for legislation confirming the legality of the League's revenue-sharing practices. The League's revenue-sharing practices are the key reason why there are presently 28 NFL member clubs, and why each of those clubs, irrespective of the size of its metropolitan area, stadium, or television market, can effectively compete on the playing field.

Q.5. Are there any plans to change the League's relocation rules to address the Oakland Raiders decision, particularly with respect to the requirement for approval by three-fourths of the League's members?

Answer:

The current NFL agreements on the location and relocation of teams were agreed to by all members as elements of the formation of the League in its present format. There are no plans to alter these League agreements at this time, in part because the decision of the Ninth Circuit panel offers no meaningful guidance with respect to the controlling antitrust standards.

In December, 1984, Commissioner Rozelle issued a policy statement that set forth procedures and standards that the League would consider in evaluating a proposed franchise transfer. A copy of that policy memorandum is attached hereto.

Specifically with respect to the three-fourths voting standard, it is questionable whether voting margins had a significant bearing on the Raiders' case issues. The proposed Raiders' move received no affirmative votes, and thus the existence of a three-fourths voting standard was not significant. Nor would a majority vote provision, or even a one-fourth provision, have likely altered the analysis. In any event, the League offered, in February of 1980 -- when the Raiders' announced move to Los Angeles was in the early stages of litigation -- to evaluate the Raiders' proposed relocation on the basis of a majority vote, rather than a three-fourths vote. The Los Angeles federal judge who presided over the Raiders' trial rejected that offer.

There is, in addition, nothing unusual about the League's use of a three-fourths vote to decide issues of team location. The three-fourths vote is used for the vast majority of League decisions. Moreover, it is quite common for joint enterprises, partnerships, and governing bodies of corporations to operate with supermajority voting requirements, and even with unanimous consent requirements. Joint ventures and partnerships are created through the consent of their participants, and ordinary principles of contract law would require all participants in the enterprise to consent to fundamental changes in its operations. The three-quarters consent requirement for fundamental changes in NFL operations therefore represents a relaxation of normal contractual principles.

More generally, internal voting matters of this character have ordinarily been thought to have little to do with these antitrust issues, and a case currently before the Supreme Court may indeed clarify that question. See Northwest Wholesale Stationers, Inc. v. Pacific Stationery and Printing Co., No. 83-1368, where the Court may consider whether the Sherman Act imposes procedural requirements on joint business enterprises in their internal decisionmaking.

Q.6. In your testimony, you implied that some relief for the NFL from the applicability of the antitrust laws would be appropriate to permit its members to set policy like a board of directors for a corporation, such as General Motors, without fear of antitrust reprisals. Why should the NFL be treated differently for antitrust purposes than organizations such as the New York Stock Exchange and the Associated Press?

Answer:

Because, in important and fundamental ways, a sports league is different from organizations such as the New York Stock Exchange and the Associated Press. The member firms of the New York Stock Exchange and the Associated Press have separate, independent business existences entirely apart from their membership in the larger joint organization. They are expected and, indeed, legally required to compete vigorously with one another outside of their participation in the joint enterprise. And the members are entirely capable of producing and marketing their primary product apart from their membership in the joint organization.

The situation in professional sports is fundamentally different, as a number of courts have recognized. The Court of Appeals for the District of Columbia Circuit has stated that the "NFL clubs . . . are not competitors in any economic sense. The clubs operate basically as a joint venture. . . ." Smith v. Pro Football, Inc., 543 F.2d 1173, 1178-79 (D.C. Cir. 1979). As another example, a federal district judge early recognized that the member clubs of a league "must not compete too well with each other in a business way." Unlike true economic competition, the clubs have no interest in driving each other out of business, because "[i]f this should happen not only would the weaker teams fail but eventually the whole league, both the weaker and the stronger teams. . . ." United States v. NFL, 116 F. Supp. 319, 323 (E.D. Pa. 1953). See also Mid-South Grizzlies, where the district court specifically distinguished the NFL from organizations such as the Associated Press, noting that the antitrust issue in the news reporting context is motivated by a concern for "the potential harm to outsiders when . . . their competitors are brought together through a trade association. . . ." 550 F. Supp. 558, 571 (E.D. Pa. 1982), aff'd on other grounds, 720 F.2d 772 (3d Cir. 1983) (emphasis supplied).

Members of a sports league have no business existence, and no product to offer, outside the league structure. Because of this unique relationship, the patterns of sports league operations and the financial implications of those operations are distinct from any other type of business.

Like the courts, leading academics have thus recognized the uniqueness of the sports league relationship. One knowledgeable observer, Professor (now Judge) Robert Bork, has identified the issue in these terms:

> "The members of a league cannot compete in the way that members of other industries can. It is neither in the interest of the members of the league nor the public generally that the more efficient teams should drive out the less efficient. If one team goes out of business all are endangered. This suggests that the concept of business competition may be irrelevant as applied to the relationship between members of a league. Functionally, the league appears to be a joint enterprise for the production of amusement spectacles."

Another authority, Professor John Weistart of Duke University, has described sports leagues as follows:

> "The realities of the major sports leagues' operations would seem to lend support to the conclusion [that a sports league is not a perpetual conspiracy or trade-restraining agreement under the Sherman Act]. The primary goal of Section 1 of the Sherman Act is to ensure that true economic competitors maintain a healthy distance from one another. The section was not intended to condemn all cooperative efforts in the business world. If a particular group of entrepreneurs are joint investors in a common venture which could not be carried on by any one of them alone, the cooperation which results hardly seems improper. In these instances, it is proper that the 'agreements' in question are viewed as essentially internal marketing decisions."

The member clubs of a sports league are not akin to a group of competitors who have joined together in a trade association. Unlike such competitors, the clubs of a sports league are incapable of operating independently--their business operations are necessarily dependent and joint, for the business of league sports necessarily requires coproduction and league agreements.

It is equally important to understand that the NFL does not seek complete immunity from the antitrust laws, or even from Section 1 of the Sherman Act. Rather, the NFL seeks only a narrow clarification of the application of Section 1 to certain essential League functions. Legislation supported by the League would do no more than confirm that certain specific decisions are properly made jointly by sports league members, just as similar decisions are made by joint or unitary enterprises without being subject to antitrust challenge.

Senator SPECTER. I would like to turn now to Mr. Donald Trump, the owner of the New Jersey Generals. Mr. Trump received his MBA from the Wharton School of Business, then began an illustrious career in the real estate development business. Major projects include Trump Tower, Trump Plaza, Trump Casino, St. Moritz Hotel, and recently has purchased 100 acres on the West Side of New York City for development of what has all the appearances of being a phenomenal development there.

As I say, he owns the New Jersey Generals of the U.S. Football League and has recently signed Doug Flutie, which may top the signing of Herschel Walker.

We appreciate your coming, Mr. Trump, to testify as to the reaction of a significant owner of a significant USFL team to the proposed legislation.

STATEMENT OF DONALD J. TRUMP, THE TRUMP ORGANIZATION, NEW YORK, NY

Mr. TRUMP. Thank you, Senator. I appreciate it very much. As the owner of the New Jersey Generals, I can speak for myself, but I believe I am speaking for the owners, also, of the other teams throughout the USFL.

As a representative and as a new league, the U.S. Football League absolutely must have the NFL subject to the laws of the State. They must have protection, we must have protection, under the antitrust laws.

We brought suit against the National Football League for a substantial amount of dollars. We are dealing with, in our opinion, a great monopoly. It has held up cities, it has hurt cities, it has hurt New York by leaving. Millions and millions of dollars have been lost.

It has hurt Philadelphia even though they have not left, and why Philadelphia made such an agreement, I do not know, but millions and millions of dollars have been gotten from Philadelphia and, in my opinion, they should not have been able to have been gotten.

It has hurt many, many other cities, and I am not only talking about cities such as Baltimore, where a team leaves in the dark of the night. You look at what Indianapolis had to pay to get that franchise and let us see really on the bottom line, in the end run, whether or not those citizens are coming out ahead or behind.

Speaking for ourselves, I have seen a bill where a particular Senator is asking for literally the demise of the USFL by going into that league's prime territories—Baltimore, Oakland, et cetera. These are among the few major cities left, and I say among the few because, again, not only is the NFL a monopoly, but the NFL has monopolized not only television where you have three networks and you have contracts with all three networks by the NFL, but they have monopolized and really gone into every major city.

If you look at your television markets, you will see that the NFL has covered every major city and it leaves us very little room. We are nevertheless doing quite nicely. We have had good ratings. We were forced to play in the wrong time of the year, which I have said from the beginning.

But, hopefully, through our lawsuit or whatever, we will be able to rectify that situation. The NFL must be subject to antitrust as would be any other business. It is impossible, unless you have a very strong, financially, and stubborn group of people, which hopefully we are in the USFL, for a league to survive in any way, shape or form, going directly against this monopoly.

And to go a step further, you have the networks. There are those that say the networks are a monopoly. You have two monopolies getting together, combining, signing contracts, and putting themselves in a position where very little else can be put on in the form of entertainment in the form of football, and it is a pretty tough situation.

We have just signed Doug Flutie. It is on the front page of every major newspaper in the country; it is the biggest story in the country. Herschel Walker, Jim Kelly, all of these various players, Steve Young—the USFL has probably gotten more exciting in terms of youth, more exciting players than the NFL.

They have gotten the last three Heisman Trophy winners; they have gotten people that other people would perhaps prefer seeing. But it is pretty tough to get the exposure when you are not allowed or not able to get on television.

It is a pretty rough situation that when you sign a Doug Flutie and you have a press conference and the press from all over the country is at a specific location for the signing of this player to hear that a network would prefer putting on fly fishing from Nicaragua or professional bowling or something which does not get nearly the ratings of the USFL, nor would it be expected to.

You really have to say—I am not saying anything is wrong by any shape or form, but you really do have to ask why. You really do have to ask why are network executives nervous when they talk to us about the USFL and putting the USFL on directly against the NFL. Why are they concerned? Why are they concerned?

Well, to me, my own reasons—I think the answers are pretty obvious. I think they are concerned because the USFL is new and, of course, it is struggling. It has probably done better than any league could have done under the circumstances. And, in fact, right now it is a relatively strong league.

However, if for any reason the rules are relaxed even more than they have been for the NFL, literally thousands of people in the USFL, and that includes team members and all of the other people associated with the league, would be very, very severely affected and it would be a shame.

And I just ask that we let the lawsuit take its course. The more I sit here this morning—you know, Senator, fortunately when you introduced me, you said I was in another business and I am very proud to be in another business. This is a rough one.

And as Senator Metzenbaum said before, with all of the problems of the country, it does seem strange that we are sitting here this morning talking about football. But the fact is it is something somewhat close to my heart and it is something that we need protection; we really need protection.

And I would like to allow the courts and the system—I would like to see what happens. The USFL cannot be put out of business selectively by the NFL, and I do not believe, and I certainly hope, that that would not be allowed to happen.

Senator SPECTER. Thank you very much, Mr. Trump.

Mr. TRUMP. Thank you, sir.

Senator SPECTER. You say that the National Football League must be subject to antitrust control. I take it at the same time that you are interested in seeing some reasonable restrictions on movements of franchises from one city to another.

For example, you would not like to see somebody move into the Arizona market at this time, would you?

Mr. TRUMP. No, sir. I think that the obligations—and, again, as Mr. Cosell said so well before, the obligations to a team are different really from other businesses. And in that sense, I believe that if you take the Philadelphia market, I believe that the Philadelphia Eagles owe the citizens and the people of Philadelphia a great, great debt and I do not believe that they should be allowed to just pick up and move.

But, generally speaking, you cannot—as an example, certain restrictions have to be taken off. The NFL and the NFL's control of the networks—it cannot continue because if it does continue, you are going to have perhaps even a shrinking of the NFL.

The only purpose for the NFL to expand—and I am not even talking now about Philadelphia. You are talking about many other cities and non-USFL cities. The only reason for them to expand and the only reason that you are going to have professional football is if you have a relaxation of the contracts right now signed with the NFL and the networks.

If the NFL were subject to one network, to one-and-a-half networks, whereby another new league or perhaps—and I am not necessarily even talking USFL, but perhaps the USFL could get onto television. You would have not just the Philadelphias protected, but you would have Memphis, Birmingham, Jacksonville, so many other cities that should have professional football and cannot, and will not with the NFL and will not with the current system.

So, now, we have a league. We play in the spring. We have provided that entertainment for those cities. Now, we want to move that entertainment, with all the big names, into the so-called big time, and the big time for football is fall. It is not spring; it is fall. That is tradition; for whatever reason, that is the time.

It will be very interesting to me to see whether or not these networks are going to give a league that has done very well in ratings and every other way—are going to give a league a contract. And I cannot tell you the answer to that yet, Senator, but I will tell you what; in 6 months, if we do not have a contract, I would come back here and be a lot more passionate because there would certainly be something very unusual going on.

Senator SPECTER. Mr. Trump, you just used the expression the NFL's control of the networks. What do you mean by that? Do you think the NFL does control the networks; that the networks will be unwilling to make a business judgment about contracting with the USFL?

Mr. TRUMP. My own feeling is that the networks are afraid of the NFL. I think the networks are concerned that the NFL may—I do not believe they necessarily do, but may have another recourse;

that a certain network may lose the NFL, and that would be not in the best interests of that network.

Senator SPECTER. The NFL cannot function without the networks, or maybe without a network or two.

Mr. TRUMP. I say that is perhaps right, but I do not think that the NFL should be allowed to be on all three networks and monopolize the networks as they do the major cities.

I believe strongly that you have to have a window; you have to have an opening for other competition to come along. Look what happened to the World Football League. You had that opening with the American Football League because the networks at that time were not at all tied up.

But look what happened to the World Football League and look what happened with us where we are forced to play in a different time of the year.

Senator SPECTER. And now the USFL is negotiating with the networks to try to get fall coverage in 1986?

Mr. TRUMP. We are negotiating, we are trying, we are doing our best. We have got tremendous people, tremendous players, and it will be very interesting to see whether or not the networks are going to give us a deal. I do not know.

I can tell you that every time you call, in my opinion, they are nervous as hell, nervous as hell, because I do not believe they want to offend in any way this great monopoly known as the NFL.

Senator SPECTER. Well, we will all be waiting to see what your results are.

Mr. TRUMP. Well, we will all be and I will, too, and we will see you at the appropriate time.

Senator SPECTER. It is not inconceivable that those results in some contours might be a subject for the Judiciary Committee in its antitrust oversight.

Mr. TRUMP. Well, I would think that would be right, Senator.

Senator SPECTER. Mr. Trump, back to the question of a team's responsibility to a city, you have said that you feel a team does have a responsibility to a city. I do not think anyone is more representative of the free enterprise system than you are.

Do you think that it violates the principles of free enterprise to have some restrictions on team movement on the private ownership issue?

Mr. TRUMP. Well, again, going back to Mr. Cosell, I believe that teams have almost a religious meaning in the context of our society. I do not know that you can just take the Philadelphia Eagles, as an example, and move them to another State, to another city.

I do not think that is fair morally to the people, and there is a difference between a business moving from one place to another. It is a bad thing; it is a horrible thing in some cases. Overall, it is probably perhaps a good thing because we are competing, we are more competitive, et cetera, et cetera.

A team will get our lower wages, and then that city that just lost the business—all of a sudden, they become more competitive and their wages go down or up, or whatever, and they become more competitive.

But, factually, there is a religious meaning to a lot of teams, and a team such as Philadelphia, which I guess was a charter member—to take the Eagles out of Philadelphia is a horrible blow to a city and I do not believe that it should be allowed.

Senator SPECTER. Do you think it is a reasonable restriction to say, as S. 172 does, that a team cannot move if it is making a profit, however we define that specifically, or perhaps an income flow, and has a decent stadium?

Mr. TRUMP. Yes. I think that, coupled with your other criteria—I think they are reasonable criteria, yes, sir.

Senator SPECTER. And do you think that to the extent that—let me back up a minute. You have heard the NFL counsel say that they have great reluctance to establish standards in the context of the current status of the law, and that is why a number of us have come forward with bills to try to make it plain.

Some of us think, as Mr. Cosell does, that they could establish standards now. But as long as any doubt exists, we want to remove the doubt and give the limited antitrust exemption.

Do you think that it makes sense to have a limited antitrust exemption, tied to specific standards; that is, not let the NFL have the sole decision, but have Congress establish standards and give a limited antitrust exemption there?

Mr. TRUMP. Yes, sir. As per your bill and as per the criteria, I think it is reasonable in this case.

Senator SPECTER. Well, thank you very much, Mr. Trump. We very much appreciate your coming to testify.

Mr. TRUMP. Thank you, sir. I appreciate it.

Senator SPECTER. I would like now to call in tandem as a panel Mr. Gene Upshaw, NFL Players Association, and Mr. Doug Allen, USFL Players Association. We welcome again Mr. Gene Upshaw, who was an all-pro guard and team captain for the Oakland Raiders. He played for 15 years in the National Football League, captained the Raiders to 1977, and my information here says 1980 Super Bowl championships. But it was not 1980; it was 1981 because it was against the Eagles.

Mr. UPSHAW. It was still the Eagles.

Senator SPECTER. But it was 1981 when you did that.

Mr. Upshaw is a graduate of Texas A&I University, 1967, is active in the business arena, and brings a wealth of experience to his job in the NFL Players Association.

Mr. Doug Allen is the executive director of the USFL Football Players Association. He was a linebacker from Penn State from 1969 to 1973 and played as a linebacker for the Buffalo Bills in the 1974 and 1975 seasons.

We welcome you here, gentlemen, and let us start with you, Mr. Upshaw. I look forward to your testimony.

STATEMENT OF A PANEL CONSISTING OF GENE UPSHAW, EXECUTIVE DIRECTOR, NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, WASHINGTON, DC, ACCOMPANIED BY TIM ENGLISH, COUNSEL, AND DOUG ALLEN, EXECUTIVE DIRECTOR, UNITED STATES FOOTBALL LEAGUE PLAYERS ASSOCIATION, WASHINGTON, DC

Mr. UPSHAW. Well, it is a pleasure for me to be here and I appreciate the committee's invitation to participate in this hearing. I would like to suggest to the Senator that I have some written testimony, if you would please accept that in the record.

Senator SPECTER. We will make it a part of the record in full, Mr. Upshaw, and to the extent that you can summarize, leaving the maximum time for questions and answers, we would prefer that.

Mr. UPSHAW. In other words, be short.

Well, I would like to introduce Tim English.

Senator SPECTER. Even that, I would not agree with you, Mr. Upshaw, considering our relative sizes.

Mr. UPSHAW. I also have sitting at the table Tim English, a member of our legal staff. One thing you learn when you come to these hearings, you bring someone that can answer some of the questions, so we welcome Tim.

Senator SPECTER. Mr. English, thank you for joining us.

Mr. UPSHAW. First of all, I would like to say that as players, we support team stability and respect fan loyalty; we think that it is very important. In many cases, clubs and owners are not respecting that.

The reason we have such an uproar is because the league acted arbitrarily. It would be very easy for the NFL to adopt rules, standards and procedures just like the Ninth Circuit has directed them to do. They really do not need any exemption; they have enough exemptions already.

We believe the reason you see teams moving from one place to the other is because there is a scarcity of franchises. We should do something to allow more cities to become involved in football. Not necessarily mandating where those franchises should be located, but we do feel that there is a definite need to be met. That is why cities are being held hostage by other cities and that is what happened to you in Philadelphia.

Senator SPECTER. Do you think Philadelphia was held hostage?

Mr. UPSHAW. I think so. I think you would agree.

Senator SPECTER. I do agree, but why do you say that, Mr. Upshaw?

Mr. UPSHAW. Well, if there were teams in certain other locations, if the NFL had expanded in a way that was reasonable, there would not be any reason for existing franchise to move. Then a team could not hold a city hostage. That is one of the problems we face.

Quite naturally, as a union leader I am interested in more jobs, and expansion would definitely make it easier to provide more jobs. There are definitely enough players. We think that in anything that the committee acts upon—make sure that we can have competition off the field as well as on the field. We suffer from restrictions as players.

One reason that you see salaries have gone up somewhat in the NFL is because of competition with the USFL. I personally feel that as an organization, we support the fans. We were fans first; we understand what they go through.

As players, we are right there with the fans. We go to the places they go. When we come in after a long road trip, the fans greet you and you do not forget those people you meet in the crowd, the hands you shake, the autographs you sign. And when they come out and support you, you feel that as a team, you should respect that and it should be protected, and that is what your bill does; it protects the fans.

One other point that I would like to address before I turn it over to Doug Allen. The players in the National Football League and in the USFL set roots within a city. We plan for careers after we are through playing, we buy homes, we invest in businesses.

And just because a team relocates, we do not relocate; we stay there because we are committed. We feel that there is a commitment between the player and the fan. Today, we have heard a lot of testimony stating that antitrust exemptions were necessary. Well, if the leagues would just do what the court directed them to do, they would not need any more exemptions.

On one hand, they say they need them, but they do not want to comply with them on the other hand. They came to the Congress first for the first exemption and they got it, and now they want others. And we feel that strengthening a monopoly that already has enormous strength would be a mistake to the players, to the fans, and to the communities that we all play in.

Senator SPECTER. Mr. Upshaw, just a question or two before we turn to Mr. Allen. You do think that a team has an obligation to stay in a city if it is making money and has a decent stadium?

Mr. UPSHAW. Yes, I do.

Senator SPECTER. I understand that you do not like the idea of an antitrust exemption, but in the context where the National Football League feels strongly, as they have testified—their representatives have, their counsel—that the law is muddled, do you think that it makes sense to give a limited antitrust exemption, as Senate bill 172 does, to remove any doubt, but limit the standards for a move to the ones which Congress specifically approves?

Mr. UPSHAW. Well, personally, I do not think they need any further exemption. But if I have to make a choice, I would say that your bill addresses it, as long as it is narrow and it addresses only relocation.

When they say the law is muddled it is because what they really want is to share all revenues. They are talking about cable and pay TV. You heard Mr. Cosell, and he stated correctly that the luxury boxes are an area in which they do not share revenues, so there is a have and a have-not situation there.

I think if we could keep the bill narrow and address only team stability and not the revenue sharing that Senator DeConcini proposes, I could live with that.

Senator SPECTER. Well, that is all S. 172 does is address team stability in that narrow base.

Mr. UPSHAW. You are on track; you are right there.

Senator SPECTER. I understand that you would like to see legislation which would mandate some specific franchises because that would provide more jobs, and that is understandably a matter of great concern to you.

But in a context where there may be some real objection to the Congress telling the League specific places to put teams, and in the context where we do enact legislation which would establish standards which would stabilize so that the leagues would then likely be in a position to add teams, perhaps two more teams—they might not be an Oakland or Baltimore, but someplace else—would you think that a reasonable compromise to give you the expansion, give you the extra jobs you are looking for, as contrasted with the approach as S. 287 does, to pick the specific cities?

Mr. UPSHAW. Well, what I am afraid of—if you give them any antitrust exemption they will just take it further. If you give it to them in one portion of a bill and say it only applies to this and then say elsewhere it does not apply to other activities as in the bill by Senator DeConcini, it is just confusing, in my opinion.

Senator SPECTER. Well, I am saying that we would give them a very limited exemption like S. 172 does. A team can move under specific circumstances.

Mr. UPSHAW. Correct.

Senator SPECTER. The NFL has said that they do not want to expand because things are unstable now, but they are likely to expand if things are stabilized. Well, in essence, you do support S. 172?

Mr. UPSHAW. Yes.

Senator SPECTER. OK, that is fine.

Mr. Allen, your turn. Thank you very much for joining us.

Mr. ALLEN. It is a pleasure to be here; I appreciate the opportunity. I do not have a written testimony, but heartily endorse Gene Upshaw's written testimony, and I think I agree with most everything that Howard Cosell and Donald Trump said earlier today.

If Donald Trump and the other owners in the league—if their labor relations policies were as enlightened as their policies on this question, I would probably be out of a job after a few days. But on this, we do agree.

There are a couple of points I would like to make, if you do not mind, specifically with respect to the United States Football League and the effect of this kind of legislation on the players.

I want to ask that you remember that franchise relocation is a different entity for new leagues as opposed to an established league. I have seen in most of the legislation proposed that recognition, and that restrictions on movement would not apply to a team until after they had been in a home location for a period of years; 6 years sticks in my mind. I think that makes sense.

I think a struggling league—for instance, the North American Soccer League—or a league that is trying to become established, like the United States Football League, should be dealt with differently, if it has to be dealt with at all, from an established monopoly like the National Football League.

I would agree with Gene that the basic approach should be that a league should be able to deal with this problem internally, and nothing in the Ninth Circuit Court of Appeals would stop any league from doing that. In a minute, I will refer to why I say that.

With respect to the point you made about mandated expansion, certainly expansion means jobs and no players' association is going to be opposed to that. I would have a problem with determining that expansion should take place in specific cities; for instance, Oakland and Baltimore.

These two cities lost NFL teams but both of them now have what I think are very solid and thriving USFL franchises. Baltimore now has the USFL champions, the Baltimore Stars, and Oakland is doing very well with the Oakland Invaders. Those USFL teams went into their new home cities because those cities were abandoned by the NFL, and I would hope that whatever legislation is passed, if legislation must be passed, would recognize the USFL is trying to create some competition in the marketplace, especially in Baltimore and Oakland.

I also think that we need to recognize that the USFL has had a particular problem with access to municipally built and operated stadiums, and to favorable terms under stadiums' leases. It has been sometimes difficult to break into the NFL monopoly with respect to the use of the stadiums.

Also, I think that a basic problem with the confusion of the issues of franchise relocation and revenue sharing must be dealt with. We would hope that under no circumstances would the Congress consider granting further exemption for any sports league, including and especially the NFL, for a sharing of pay TV or cable TV revenues because we are concerned that this would lead inexorably to taking NFL football, at the very least, off of free TV and putting it on pay TV and cable TV, where the average fan who now has a very difficult time getting a ticket to an NFL game would find it impossible to watch NFL football as well.

Senator SPECTER. If the NFL had generalized antitrust exemption which they have sought, do you think it would lead to pay TV?

Mr. ALLEN. I think that if they are permitted to share their revenues garnered from pay TV or cable TV in the same manner that the previous exemption allows them to share sponsored broadcasting, that would be almost an inevitable result.

And there is one other thing that has been brought up here several times by Mr. Moyer that is a fallacy. A sports league is not any more or less than a collection of individual team owners, and to suggest that a sports league as a collective will act differently than an individual team owner is—as my colleague here at the table, Tim English, remarked earlier, like putting the fox in charge of the chicken coop and saying that one fox is dangerous, but if you have two or three foxes watching over the chickens, they are going to be eating carrots and radishes instead of chicken for dinner.

I think that a league operates in its own self-interest, and that self-interest is expressed as the interests of the individual team owners sitting together.

One final point——

Senator SPECTER. We did not have a chance to really get into everything, but it really is not an analogy about a board of directors. If you have a variety of steel companies sitting down at the Steel Institute—United States Steel and Bethlehem Steel and Wheeling-Pittsburgh—they cannot do that without violating the antitrust laws, or all the coal companies sitting down.

You cannot get into every little point which is made, but I would focus on that since you have brought it up. That is hardly a persuasive point if the boards of directors do not ordinarily run into antitrust problems.

Mr. ALLEN. I agree with you, Senator. While in the case of some sports leagues they share some of their revenues, they do not share their profits and losses and they are, in terms of players at least, economic competitors, or should be.

But one final point I would like to make. Jay Moyer said there was no reference in the Ninth Circuit Court of Appeals decision with respect to an owner's majority vote or with respect to permitting the league to establish its own franchise movement standards, and I would refute that and ask your indulgence to quickly point out where.

Reading from the opinion, I quote:

> The NFL argues that the requirement of rule 4.3 that three-quarters of the owners approve a franchise move is reasonable because it deters unwise team transfers. While the rule does indeed protect an owner's investment in a football franchise, no standards or durational limits are incorporated into the voting requirement to make sure that concern is satisfied, nor are factors such as fan loyalty and team rivalries necessarily considered.
>
> Under the present rule 4.3, however, an owner need muster only seven friendly votes to prevent three-quarters approval for the sole reason of preventing another team from entering its market, regardless of whether the market could sustain two franchises.

And further, again, I quote with reference to the issue of objective standards:

> To withstand antitrust scrutiny, restrictions on team movements should be more closely tailored to serve the needs inherent in producing the NFL product and competing with other forms of entertainment.
>
> An express recognition and consideration of those objective factors espoused by the NFL as important, such as population, economic projections, facilities, regional balance, et cetera, would be well advised. Fan loyalty and location continuity could also be considered,

And it goes on.

And I think it is very clear that the NFL could have and should have adopted reasonable rules, and if they had, they might very well not have that $50 million judgment against them in the *Raiders* case.

Senator SPECTER. Mr. Allen, do you agree with what Mr. Upshaw said that given the NFL's concern that you would support S. 172, which is the limited antitrust exemption to permit transfers under very tightly controlled standards?

Mr. ALLEN. As Gene said, and I agree with him, we think the league can deal with this internally. If the Congress feels it is necessary to act then we would support a very limited approach that deals with objective standards and provides judicial review of team movement decisions by league.

But we think that you should also consider the possibility of adopting legislation that simply directs that a team cannot move unless those objective standards are met, and does not deal with the question of giving the league an antitrust exemption.

We think that possibly it could be done without the exemption. If it has to be done with the exemption, we would hope that it would be very, very narrowly drafted, and I know Tim English is prepared to comment on why, because in the past the exemption dealing with mergers and network broadcast revenues have been used by the NFL against the NFL players, in very expensive litigation for the players, to justify restrictions on player movement.

And we would be concerned that that same kind of approach would be taken by sports leagues in the future.

Senator SPECTER. All right. But among the four bills which are pending in the 99th Congress—S. 172, 259, 287 and 298—you dislike S. 172 least of all?

Mr. ALLEN. I think dislike is too strong a word.

Senator SPECTER. Well, it is the best of the alternatives?

Mr. ALLEN. Certainly, that is by far and away true, yes.

Senator SPECTER. OK. That is what I was trying to get to.

Would you like to make a comment?

Mr. ENGLISH. Yes, Senator. What Mr. Allen was referring to was the last time the NFL was successful in getting an antitrust exemption from Congress which allowed the American Football League and the National Football League to merge back in the late 1960's That antitrust exemption was limited to the merger.

Believe it or not, some 6 years later the NFL, in one of the major antitrust suits in sports in this century—in the NFL Players Association's challenge of the Rozelle rule—the National Football League took the position that the merger exemption that had been granted by Congress back in 1967 covered their actions——

Senator SPECTER. When?

Mr. ENGLISH. In the Rozelle rule.

Senator SPECTER. Well, anybody can contend anything.

Mr. ENGLISH. Yes.

Senator SPECTER. They did not prevail.

Mr. ENGLISH. But this is part of the problem, Senator. We are kind of a flea on the back of the buffalo and they can win simply by being able to go into court and have any kind of a colorable argument.

Senator SPECTER. Was it a colorable argument?

Mr. UPSHAW. It might have been.

Mr. ENGLISH. In our opinion, it was not, but it cost us a great deal.

Senator SPECTER. They can go into court without a colorable argument.

Mr. ENGLISH. It cost us a great deal of money and several years without a collective bargaining agreement to prove that.

Senator SPECTER. Mr. English, I would invite you to confer with Mr. Manne of my staff. We would be glad to look at your specific language.

Gentlemen, thank you all very much.

Mr. ENGLISH. Thank you, Senator.

Mr. ALLEN. Thank you, Senator.

Senator SPECTER. The record will remain open for 2 weeks for other Senators' statements. Senator Mathias has said that he specifically will submit a statement, and others may wish to do so as well. And that does conclude the hearing.

[Whereupon, at 12:54 p.m., the committee was adjourned.]

[Prepared statement follows:]

STATEMENT OF

GENE UPSHAW
EXECUTIVE DIRECTOR, NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION

Mr. Chairman and Member of the Committee:

My name is Gene Upshaw. I am Executive Director of the NFL Players Association and I have served in that capacity for the past two years. I formerly was an offensive lineman with the Oakland and Los Angeles Raiders, for fifteen years. I have been an alternate player representative, a player representative, vice-president and president of the Players Association. All this is to say that I have had considerable experience both as a player and union officer in the National Football League.

On behalf of approximately 1500 professional football players in the NFL whom the Players Association represent, we thank the Committee for its invitation to appear and express our views on two bills introduced within the first weeks of this Congress: S.172, introduced by Senator Specter, and S.298, introduced by Senator DeConcini.

I appear today also as President of the Federation of Professional Athletes, AFL-CIO which represents the NFL Players Association, the North American Soccer League Players Association, the Major Indoor Soccer League Players Association and the recently formed United States Football League Players Association. I am accompanied by Doug Allen, Executive Director of the USFL Players Association, and I am proud to say we are affiliated with the AFL-CIO.

At the outset, we wish to stress that the NFL Players Association and its members have a vital interest in franchise stability and the economic viability and prosperity of professional football. Our members share many of the same interests and goals held by citizens in the communities in which they play. We believe that community investments and fan loyalty should be respected - not callously disregarded. Players plan for post football careers in their "home" communities, and develop roots there. The stability of a franchise is important in that planning. The experience of team relocation under baseball's antitrust exemption offers little reason to expect that that NFL will act to protect and respect the interests of municipalities. In fact, the NFL has already failed to do so in Los Angeles, New York, Dallas, and Detroit. Such decisions by sports owners should not be placed entirely beyond the law nor should they be permitted to be made by whim, caprice or personal prejudice.

As a part of organized labor, moreover, the NFLPA also shares with the AFL-CIO a commitment to the principle that competition in product and service markets is the best means of assuring that the public interest will be protected. Adding any further antitrust exemption to those already possessed by the NFL and its team owners, or declaring certain conduct "lawful" without precise definition or documented need undermines the principle of free and open competition. It vests extraordinary economic power in sports cartels with whom collective bargaining already is difficult. Past experience shows it is dangerous. It is vital that any legislation in this area be strictly and narrowly drawn, and that full, impartial review of League actions be guaranteed.

The history of sports franchise movement provides no assurance at all that the sports leagues and the team owners are sensitive to the interests and needs of the communities in which they operate. In the Raiders case, the Ninth Circuit expressly found:

> "There was evidence to the effect that the NFL in the past remained expressly noncommittal on the question of team movement. This was done to give owners a bargaining edge when they were renegotiating leases with their respective stadia. The owner could threaten a move if the lease terms were not made more favorable, (emphasis added).

Los Angeles Memorial Coliseum Com'n v. NFL, 726 F.2d. 1381, 1394 (1984).

The record in other sports is no more encouraging.

The bills before the Committee appear to enable the NFL to require a three-fourth majority vote which the federal courts in the Raiders case found to be an unreasonable restraint of trade and illegal. (Prior to the Raiders case, the NFL required a unanimous vote to permit a team to transfer into another team's "home" territory.) The same courts have rejected the League's argument that it is a single entity and therefore not subject to antitrust scrutiny.

We oppose any legislation that would simply reinstate League control over team relocation unless it was subject to antitrust scrutiny. Any statutory language which purports to reinstate league controls and vitiates the antitrust decisions of the federal courts would be contrary to the interests of fans, the communitites, stadium authorities and the players. We urge this committee not to disturb these decisions by legislation. It would be a serious mistake for Congress to send a signal to the courts that the League may enforce restrictions on team movement without satisfying antitrust requirements. In other words, we think legislation should not only spell out what standards are to apply, but what procedures and votes should govern.

Similar extraordinary majorities govern league expansion and the approval of collective bargaining agreements. We suggest that the industry be forced to justify the extraordinary majority vote as the least restrictive available means to protect the industry. Overall, we ask that Congress undertake a deep and thorough analysis of the present structure of organized team sports, the system which restricts players and their ability to sell their services, imposes artificial scarcities, and which possibly impedes collective bargaining through the imposition of an extraordinary majority vote to approve any collective bargaining agreement. Those persons who justify the present system by allegations of financial ruin or internal chaos if changes were to be made, should be asked to supply evidence or other factual data to justify existing anticompetitive practices.

We appeared and testified before this Committee on August 6, 1982 on this subject. With your permission, Mr. Chairman, we wish to incorporate by reference our testimony at that time. At that time we objected to private relief legislation for the benefit of sports team owners. We still oppose such legislation. Then we opposed any new special antitrust exemptions for professional team sports pertaining to franchise relocations and authorizing undefined revenue pooling. We still do.

S.298 resembles a predecessor bill, S.2784 introduced by Senator DeConcini in the 97th Congress. We opposed the provisions of the bill then which would extend additional antitrust immunity to sports team owners and their leagues. We remain opposed to the provisions contained in S.298. The legislation would oust federal antitrust law in at least two areas without providing any regulation or standards in their place. It would grant unreviewable powers to the sports monopolies despite the fact that recent court decisions in the Raiders case encourage the NFL to adopt reasonable standards and voting procedures designed to protect the community and industry interests the league claimed it was protecting. Based on the experience of team moves in professional sports, we do not believe that the interests of fans, communities or the players are best served by delegating the accomodation of various community interests to sports team owners. Adding a further antitrust exemption to those already possessed by the NFL and its team owners undermines the principle of free and open competition.

We also oppose provisions of S.298 that would immunize the pooling of revenues. Since commercial television revenues can be pooled under current law, what other revenues is this intended to cover? Such additional pooling immunity will erode players' abilities to negotiate salaries that reflect an athlete's true value. For example, if an owner owns 1/28th of every player in the league there is little incentive for the owner to bid or pay more for a particular athlete's services. In this context, league-wide revenue pooling adversely affects the salary structure of professional athletes. Revenue sharing has contributed to a total lack of player mobility within the National Football League. Any revenue sharing proposal requires the most careful scrutiny and review of detailed financial information from the affected sports leagues, including such basic financial information as current network television contracts, gate receipts, and profits earned from subsidiary monopolies such as NFL Films Inc. and NFL Properties Inc.

In sum, S.298 is private special legislation for the sole benefit of the sports entrepreneurs. There is no justification for conferring additional antitrust immunity on the NFL, its member clubs or any other professional sports league.

Mr. Chairman, the views we express about these special exemptions find support in a letter written by the Department of Justice to Chairman Thurmond on November 29, 1982. The Department opposed enactment of S.2784, a predecessor bill to S.298, on the grounds that it was "unwarranted and unwise". A copy of the Department's letter is attached to this statement.

On the other hand, S.172 introduced by Senator Specter four weeks ago is a more promising and constructive approach. The bill implicitly acknowledges that granting unrestricted, unreviewable powers to sports team owners is inherently mischievous and offers no guarantee that the public interest will be protected. The bill prudently establishes standards or criteria to restrict relocation decisions. In order to be certain that municipal and stadium authorities are not unjustly dealt with or threatened, however, it may be appropriate to tighten and clarify the propsed criteria. We will be pleased to work with the Committee in that regard.

S.172 also wisely omits any immunity for revenue sharing or revenue pooling. As we have stated, we believe such an exemption is not in the best interest of the fans or the players.

We note that the bill is designed to regulate transfers from one metropolitan area to another. We suggest the Committee consider an amendment to make S.172 applicable to transfers _within_ a metropolitan area if the transfer is to a new community under the jurisdiction of a different government or stadium authority. Past history has shown that a number of team moves have occurred within an SMSA but still adversely affected the "home" city. Such moves deserve attention under the proposed legislation. We would prefer that no further antitrust immunity be granted professional sports. Also we would prefer that extraordinary majorities not control league decision making. We believe that these matters, however, can be addressed within the context of S.172.

We would hope that the entire issue of _franchise expansion_ could be addressed. The NFL's monopoly procedures have fostered artificial scarcity and have been responsible for the spectacle of one city vying to obtain a franchise from another city. Indeed, the NFL blatantly trades expansion franchises as the currency for obtaining additional immunity from the antitrust law.

Mr. Chairman, as we have said, we fail to see any justification for requiring extraordinary majorities (such as three-fourths votes) of team owners to approve franchise expansion. Communities and fans that are prepared and able to support major league sports, as well as professional athletes, will benefit if expansion decisions are made by less restrictive voting requirements.

We respectfully urge that legislation on relocation provide that the views of athlete-employees or their representative be heard, their views considered, and that they be afforded standing to challenge relocation decisions. Also, we suggest that another standard be added to S.172 to provide that consideration be given to whether there are other persons or entities, in addition to the owner proposing to relocate, interested in obtaining an expansion franchise in the proposed new location. With respect to such other persons or entities, legislation should require that the leagues consider such expansion application and make recommendations thereon. Federal legislation on the subject should encourage consideration of expansion applications in any effort to regulate franchise relocation.

Expansion clearly serves the interest of the public - particularly those communities whose desire and financial capacities can support new teams - as well as the interest of professional athletes by expanding the job market. Elimination of League restrictions that unreasonably limit expansion would further the national policy favoring market-place competition. We concur in the views expressed by the Department of Justice in January 1980 in its letter to House Judiciary Committee Chairman Rodino:

> "When a geographic region is capable of supporting more than one franchise, it is not in the public interest to allow the existing team to block entry solely to protect monopoly profits."

We would add that an extraordinary majority should not be allowed to block expansion solely to protect monopoly profits.

Mr. Chairman, each sports league is a monopoly - it has sought and received over the years special favors from the Congress. These exemptions have secured a priviliged position for this industry in American business and, except for occasional private antitrust lawsuits, have permitted these enterprises to operate without answering to any federal authority. Each league has acquired superior economic bargaining positions with respect to networks, cities, stadium authorities, professional athletes and their unions. League operations under commissioner rule, in many cases, resemble a virtual private government.

As Senator Specter suggested in a letter to Commissioner Rozelle dated December 17, 1985, we believe it appropriate that the Committee undertake an in-depth study as to how exemptions for broadcasting and merger have operated. Has the public interest been served? Are communities threatened with franchise removal unless greater concessions are forthcoming? Have consumers paid more for this product as a result of artificially created scarcities? Are restrictions on player entry and movement in the public interest? Is private antitrust litigation the optimal enforcement mechanism? Does the fact that legal costs can be divided twenty-eight ways as in the NFL, and the fact that potential plaintiffs have a short professional career, deter effective enforcement?

What is the ability of communities to retain or acquire a professional sports franchise? Have the sports owner-promoters operated in a responsible manner which entitles them to continued antitrust exemptions? Should the broadcasting exemption be unchanged, repealed or conditioned on certain changes in policies and practices?

A comprehensive study of professional sports, should be undertaken not simply because of a baseball of football strike or because a football team has moved its franchise. It is needed because the existing monopoly powers of the sports leagues are so substantial that private litigation and collective bargaining cannot be relied upon to eliminate anticompetitive practices. The sports team owners can and do pool their reserves. They easily can drain a union of its financial capacity to conduct litigation or negotiations. Just consider the disparity in wealth between the

NFLPA and twenty-eight NFL owners or between the Major League Baseball Players and twenty-six baseball owners.

Since 1957 when the Supreme Court first ruled that the NFL's group boycotts against professional football players made the league subject to the antitrust laws, the NFL has sought exemptions from Congress. One year after the Court ruled, former NFL Commissioner Bert Bell pleaded that Congress exempt the League's territorial rules, else football would no longer exist. That effort failed. In 1961, however, a sports broadcasting exemption was enacted by Congress permitting the pooling of rights and revenues in "sponsored telecasting" of professional games.

In 1964 and 1965 attempts to obtain broader exemptions were resumed by Pete Rozelle. Again the Congress rejected the League's pleas for special immunity.

In 1966 when Congress did exempt the merger of the National Football League and the American Football League, assurances were given that the NFL rules would still be subject to antitrust review. Nevertheless, in the players' suit challenging the compensation/reserve rule - the so-called Rozelle Rule - the NFL claimed the Congress had exempted the Rule when the merger was permitted. Fortunately, the players prevailed after lengthy and costly litigation despite the League's representations to the court which were diametrically opposite to those made to Congress.

Since 1980, when the Raiders sought to move to Los Angeles, the NFL has proposed or supported bills that would give it free license to act outside judicial scrutiny. Fortunately, to date, its efforts to win further special antitrust immunity have failed. One may legitimately ask why the League doesn't simply conform its policies and practices to the law as other business enterprises do? But the record in professional football demonstrates that instead of modifying its rules and abiding by court rulings the NFL continues to press for private relief for the benefit of team owners, at the expense of fans, communities and the players. Its efforts include all manner and form of inducement and persuasion including the promise of new franchises. The NFLPA opposes these efforts.

We believe the antitrust laws are sufficiently flexible to accomodate the special needs of professional sports. We think the time is long overdue for the NFL to modify its rules and practices and conform to the requirements of the law.

We are gratified that our views parallel those of the Department of Justice in opposing the creation of any special antitrust immunity for the sports team owners. There simply is no warrant for insulating league decisions from judicial reveiw or for permitting a group of owners to operate in ways that unreasonably restrain competition. There can be no assurance that a group of individual owners operating outside legal scrutiny, will protect the legitimate interests of fans, municipal governments, stadiums or players.

We pledge to work with the Committee and staff to formulate effective and workable legislation.

I will try to answer any questions that you may have.

Thank you.

United States Department of Justice

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

WASHINGTON, D.C. 20530

NOV 29 1982

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the views of the Department of Justice on S. 2784, the "Major League Sports Community Protection Act of 1982." The Department recommends against enactment of this legislation.

Summary of the Legislation

S. 2784 would create certain special exemptions from the antitrust laws for professional team sports. Section 2 of the bill provides that it shall not be unlawful under the antitrust laws for a professional team sports league 1/ and its member clubs "to enforce rules authorizing the membership of the league to decide that a member club of such league shall not be relocated" or "to enforce rules for the division of league or member club revenues that tend to promote comparable economic opportunities for the member clubs of such a league."

Section 3 of the bill would place certain limitations on the special antitrust exemptions created by section 2. Section 3 provides that nothing in the legislation shall be deemed to affect the applicability of any provision of law, including particularly the antitrust and labor laws, to wages, hours, or other terms or conditions of player employment or to other player employment or player union collective bargaining matters. Section 3 also provides that the bill shall not exempt from the antitrust laws any agreement to fix the price of admission to sports contests or

---

1/ "Professional team sports league" is defined in section 6 of the bill as "the organized professional team sports of basketball, football, hockey or soccer."

any predatory practice or other conduct with respect to competing sports leagues. Finally, section 3 provides that the bill shall neither modify existing federal statutes relating to the television practices of professional sports leagues, or affect the applicability of the antitrust or communications laws to joint dealing practices by sports leagues "with respect to the sale of cable or subscription television." 2/

Section 4 of the bill provides that the states and their political subdivisions shall not limit "the collective conduct of professional team sports leagues or their member clubs authorized by this Act." Section 5 provides that the bill shall apply to antitrust actions commenced after the date of enactment, as well as those commenced prior to the date of enactment unless (1) the judgment is "final and unappealable" on or before enactment or (2) the court determines that it would be manifestly unjust to apply the Act to the unresolved claim of any party not a member club in a case in which a release or covenant has been signed prior to enactment of the bill.

Effect on Existing Law

S. 2784 would change existing law by exempting from scrutiny under the antitrust laws two broad classes of sports league practices--any and all league rules authorizing the league membership to decide that a member club may not relocate, and any and all revenue pooling arrangements that tend to promote comparable economic opportunities for member clubs. At present, these practices, like most other league practices, are subject to the antitrust laws, including Section 1 of the Sherman Act which prohibits contracts, combinations and conspiracies in restraint of trade. 3/ *See, e.g.*, *Flood v. Kuhn*, 407 U.S. 258, 282-83 (1972); *Radovich v. National Football League*, 352 U.S. 445 (1957); *San Francisco Seals Ltd. v. National Hockey League*, 379 F. Supp. 966, 968 (C.D. Cal. 1974).

2/ This provision of section 3, together with section 2 of the bill, leaves the effect of the bill on cable or subscription television practices somewhat unclear. It may be that while the bill would exempt league arrangements governing the *pooling* of members' cable or subscription television revenues, it would not affect the applicability of the antitrust laws to *joint dealing practices* involving the sale of cable or subscription rights.

3/ Exceptions include the anomalous baseball exemption (*see* *Flood v. Kuhn*, 407 U.S. 258 (1972)) and the statutory exemptions relating to league sales of sponsored telecasting rights and to the 1966 merger of the National Football League and American Football League (*see* 15 U.S.C. §§ 1291-1295).

Current law requires courts examining the practices of sports leagues under the antitrust laws to apply straightforward antitrust rules in a manner that accommodates the particular characteristics of professional team sports while promoting the important competitive, consumer welfare objectives of those laws. Perhaps the most basic of these antitrust rules is the "rule of reason," under which the alleged anticompetitive features of a challenged practice or agreement are measured and weighed against procompetitive justifications. If, after such analysis, the practice or agreement can be said to be reasonable in the commercial context, and no more restrictive than necessary, then it will not be held to be a violation of the antitrust laws. This standard has been applied in recent years in private litigation involving alleged restraints on the ability of players to negotiate freely with professional sports teams. *See Smith v. Pro Football League*, 593 F.2d 1173 (D.C. Cir. 1978); *Kapp v. National Football League*, 586 F.2d 644 (9th Cir. 1978), *cert. denied*, 441 U.S. 907; *Mackey v. National Football League*, 543 F.2d 606 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977).

The *Mackey* case is illustrative of how courts, in applying the rule of reason, can give careful consideration to the nature of a sports league and to its asserted justifications for the practices being challenged. In that case, plaintiffs challenged the NFL's so-called "Rozelle Rule," which formerly governed the compensation due a team that had lost a "free agent" to another team. In evaluating the Rozelle Rule, the *Mackey* court addressed the league's asserted justifications, including the argument "that without the Rozelle Rule . . . competitive balance throughout the League would . . . be destroyed; and that the destruction of competitive balance would ultimately lead to diminished spectator interest, franchise failures, and perhaps the demise of the NFL, at least as it operates today." 543 F.2d at 621. The *Mackey* court stated: "We do recognize, as did the district court, that the NFL has a strong and unique interest in maintaining competitive balance among its teams. The key issue is thus whether the Rozelle Rule is essential to the maintenance of competitive balance, and is no more restrictive than necessary." *Id.* The court analyzed in some detail the nature and operation of the Rozelle Rule before holding that the Rule, as then enforced, unreasonably restrained trade in violation of the Sherman Act. But the court noted that "our disposition of the antitrust issue does not mean that every restraint on competition for players' services would necessarily violate the antitrust laws." *Id.* at 623.

The type of analysis that the *Mackey* court performed is consistent with proper antitrust analysis of joint ventures. Such an analysis recognizes that some consultation and cooperation among firms in a joint venture can often enhance competition and consumer welfare by, *inter alia*, facilitating the provision of a basic product to the public, in competition with products provided by those outside the venture, including other similar joint ventures. Such analysis would recognize that sports leagues require consultation and agreement among their constituent teams with respect to, for example, the rules of play and the scheduling of games.

At the same time, however, joint venture analysis recognizes that, depending in part on the degree to which a particular venture faces actual or potential competition from others outside the venture, unnecessary elimination of competition between the members of the venture can present cognizable antitrust problems. In the case of professional football, where the merger of the two directly competing leagues has been sanctioned (see 15 U.S.C. § 1291), this concern for intra-venture competition is heightened. Thus, an admitted need for some cooperation among members of a joint venture does not necessarily justify any and all of their cooperative arrangements. The desirability of preserving a number of joint ventures rather than permitting consolidation, whenever that course is practicable, is evident.

There is, at the present time, relatively little law regarding the application of appropriate antitrust standards to the classes of practices that would be exempted from antitrust scrutiny by S. 2784. Current interest in the bill appears to be in part a reaction to the recent jury verdict in the Oakland Raiders case, Los Angeles Memorial Coliseum v. National Football League, No. 783523-HP (C.D. Cal., May 7, 1982). In that case, a jury found a National Football League rule that was invoked to block the move of the Oakland Raiders to the Los Angeles Memorial County Coliseum to be an unreasonable restraint of trade in violation of the Sherman Act. 42 Antitrust & Trade Reg. Rep. (BNA) 1160 (June 3, 1982). The specific rule in question required approval of three-fourths of the league owners before a team could relocate. The Raiders case is presently pending in the Ninth Circuit, and the Department of Justice does not comment extra-judicially on the merits of pending private lawsuits. In considering the current state of the law regarding franchise relocation, however, two points concerning the Raiders litigation should be remembered: first, it is our understanding that the jury verdict condemned only the particular league rule on franchise relocation that was before it and not all possible league restraints on relocation; second, the case is on appeal.

League restrictions on franchise relocation have been challenged and upheld in another professional sports context. In San Francisco Seals Ltd. v. National Hockey League, 379 F.Supp 966 (C.D. Cal 1974), the court disposed via summary judgment of plaintiff's Section 1 challenge to the NHL's denial of its request to move from the San Francisco area to Vancouver, British Columbia, a community which at the time had no NHL franchise. 4/ The Seals court reasoned that within the relevant market at issue (which it defined as the production of professional hockey games before live audiences in the United States and Canada), the Seals and other NHL teams were not competitors in the economic sense but rather "members of a single unit competing as such with other similar professional leagues." 5/ Id. at 969-70.

With respect to revenue pooling by sports leagues, Congress in 1961 exempted from the antitrust laws agreements by which the member clubs of a professional football, baseball, basketball, or hockey league pool their separate rights in the "sponsored telecasting" of their games and sell those pooled rights to one or more purchasers, such as television networks. 15 U.S.C. § 1291. 6/ Such agreements, including agreements among the teams in a league on how to divide the revenues received from the sale of those pooled television rights, have been used by the

---

4/ The fact that the Raiders, unlike the Seals, were attempting to move into another team's home area was cited by the district court in the Raiders litigation as a factor distinguishing the two cases. See 519 F. Supp. 581, 585 (C.D. Cal. 1981) (decision denying directed verdict).

5/ The rival World Hockey Association has since folded, with some of its teams joining the NHL.

6/ The legislative history of this provision indicates that Congress was reacting to the decision in United States v. National Football League, 196 F. Supp. 445 (E.D. Pa. 1961). See S. Rep. No. 1087, 87 Cong., 1st Sess. In that case, the court reviewed an arrangement by which the NFL clubs pooled their television rights and sold those exclusive rights with revenues to be divided equally, and held that the arrangement violated the court's 1953 judgment entered in an antitrust case brought by the government challenging certain of the television and radio practices then employed by the NFL. The judgment enjoined the league and its clubs from making any agreement "having the purpose or effect of restricting the areas within which broadcasts or telecasts of games . . . may be made." 196 F. Supp. at 447; see United States v. National Football League, 116 F. Supp. 319 (E.D. Pa. 1953). The Senate Report indicates that it was Congress' view that legislation was needed in order to allow NFL clubs to act in concert to assure clubs with weak teams or limited home territory television markets an adequate amount of television coverage and income, so that the structure and continued operation of the league would not be imperiled.

sports leagues over the years to an extent that varies according to the sport. We are unaware of any case law regarding the pooling of other revenues by professional sports leagues.

To summarize, existing law allows antitrust scrutiny of most professional sports league practices, including existing or potential league rules regarding franchise relocation and at least many types of revenue pooling. The law requires a reasoned judicial approach to such practices under straightforward antitrust principles, including the "rule of reason." Only a few of the practices addressed by S. 2784 have been subject to antitrust scrutiny, and these have encountered mixed and as yet indeterminate results. S. 2784 would, with only extremely limited possible exceptions, proscribe antitrust review of all professional sports league rules imposing restraints on franchise relocation that exist now, or may exist in the future, as well as a similarly-broad category of possible revenue pooling arrangements.

Discussion

Special new antitrust exemptions protecting any and all professional team sports league rules imposing restraints on franchise relocations and a broad category of undefined revenue pooling arrangements have not, in the Department's view, been justified. The antitrust laws embody the nation's fundamental national economic policy favoring competition, and are flexible enough to accommodate the legitimate interests of professional team sports. Recognizing this fundamental importance and flexibility, the courts do not lightly imply antitrust immunity, and construe statutory exemptions narrowly. The legislative approach to proposed antitrust exemptions has been and should continue to be similarly cautious; Congress has generally required strong showihgs of highly unusual and compelling circumstances before seriously considering affording a given industry special and privileged treatment under the antitrust laws. We do not believe that such circumstances as to support enactment of S. 2784 exist.

First, we continue to believe that the antitrust laws, as passed by Congress and as interpreted by the courts, do not prevent sports leagues from engaging in activities that are competitively neutral or procompetitive. Existing antitrust doctrine, including that found in team sports cases, requires consideration of the real "business stuff" 7/ of which league practices consist before they can be condemned under the antitrust laws. Notwithstanding the jury's verdict in the Raiders case, we do not

---

7/ See White Motor Co. United States, 372 U.S. 253, 263 (1963).

consider the legality of all rules restraining franchise relocation to have been thoroughly adjudicated. The final result in that case has yet to be determined, and there has been no demonstration as to how the antitrust laws would affect in other factual contexts the wide variety of other potential rules restraining franchise relocation that would be protected by S. 2784. Similarly, we are unaware of any showing of an inappropriately hostile judicial reception to revenue pooling arrangements that might be tested under extant antitrust rules. Simply put, the current state of antitrust law regarding the legality of professional sports league franchise relocation rules and revenue pooling is not such as to demonstrate or even strongly suggest that the courts will be unwilling or unable to come to reasonable conclusions in this area.

Second, we do not accept the argument that, even if the courts are able to apply the antitrust laws properly to franchise relocation rules and revenue pooling, until they do leagues will be deluged with meritless antitrust challenges or forced to alter their behavior in ways that are inimical to legitimate league interests or those of the consuming public. We are aware of little evidence to support this argument; we see no reason to believe that absent the exemption regarding relocations, franchise relocations would be widespread or that whatever relocations may occur would threaten league viability or success. In any event, legislation designed merely to short circuit the judicial antitrust process necessarily assumes that none of the exempted practices could or at least should ever be found to violate appropriate antitrust standards. We believe that the record on the possible competitive effects of the broad classes of relocation rules and revenue pooling arrangements that would be protected by S. 2784 is insufficient in this regard.

Third, we are not aware of any showing that the antitrust laws--properly applied to franchise relocation rules or revenue pooling--will have perverse societal effects. The objectives of the antitrust laws--to prevent private conspiratorial or monopolistic behavior that interferes with the competitive process and thus prejudices delivery of the best possible products to consumers at the lowest possible prices--appear fully consistent with the interests of both producers and consumers of professional team sports. 8/

8/ A variety of community welfare arguments have been raised in connection with the proposed legislation, regarding both the interests of cities in danger of "losing" a team and those that

[footnote continued on next page]

In sum, we believe that the antitrust exemptions proposed by S. 2784 are unwarranted and unwise. Existing precedent is not sufficient to warrant the conclusion that the standards of the antitrust laws are insufficiently flexible to accommodate procompetitive, legitimate professional sports league interests. And there is no showing that appropriate antitrust results will be inconsistent with ultimate social goals in this area. Accordingly, the Department of Justice recommends against enactment of this legislation.

I would like to take this opportunity to note our concern with the increasing frequency and similarity of arguments made to Congress by various industries that the standards of the antitrust laws are too rigid to take account adequately of their peculiar characteristics and legitimate interests. The common thread of these arguments is that the courts have occasionally lost sight of the procompetitive, consumer oriented goals of those laws and conducted unduly narrow analyses of the real competitive effects of challenged practices. We believe that it would be better to consider this question from an overall standpoint, rather than continue to debate the merits of a wide variety of special antitrust rules covering special industries or situations.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General

[footnote continued]

might "gain" a team as a result of franchise relocation. It is important to note, however, that immunizing from the antitrust laws league restraints on franchise relocation would not really resolve these arguments. The antitrust exemption provided by S. 2784 would, in a very real sense, merely delegate the accommodation of the competing community interests involved to a group of private entrepreneurs with an interest--entirely legitimate--in maximizing the profits of their enterprise.

JUDICIARY COMMITTEE
FEB 25 PM 3 23

'85 FEB 25 [illegible] 12 55

LAW OFFICES
LANDIS, COHEN, RAUH AND ZELENKO
1019 NINETEENTH STREET, N.W., SUITE 500
WASHINGTON, D.C. 20036
(202) 785-2020

JAMES M. LANDIS (1899-1964)
WALLACE M. COHEN[*Δ]
R. MICHAEL RAUH[*]
MARTIN SHULMAN[Δ]
BENJAMIN L. ZELENKO[‡]
MICHAEL S. LEVY
ELLEN GODBEY CARSON
TOM A. LIPPO

JULIAN H. SINGMAN[*]
HARRY FRIEDMAN
OF COUNSEL

[*] ALSO ADMITTED IN MASSACHUSETTS
[*] ALSO ADMITTED IN VIRGINIA
[Δ] ALSO ADMITTED IN MARYLAND
[‡] ALSO ADMITTED IN NEW YORK

CABLE ADDRESS
LACOZ WASHINGTON, D.C.

VIRGINIA OFFICE
4150 CHAIN BRIDGE ROAD
FAIRFAX CITY, VIRGINIA 22030
(703) 691-0100

MARYLAND OFFICE
200-A MONROE STREET
SUITE 318
ROCKVILLE, MARYLAND 20850
(301) 294-0480

February 22, 1985

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In response to your letter of February 8, 1985, we enclose written responses by Mr. Gene Upshaw, Executive Director of the National Football League Players Association to certain questions you presented in reference to legislation pertaining to sports team relocation.

If the Committee requires further information or comment, we will be pleased to respond promptly.

Sincerely,

Benjamin Zelenko

Benjamin L. Zelenko
Landis, Cohen, Rauh and Zelenko
Special Counsel NFLPA

BLZ:cld

Enclosure

NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION

ANSWERS TO QUESTIONS SUBMITTED BY CHAIRMAN THURMOND

1. LEGISLATION BEFORE THE COMMITTEE SPECIFICALLY STATES THAT IT IS INTENDED TO HAVE NO IMPACT ON LABOR-MANAGEMENT MATTERS. DOES THIS PROVIDE ADEQUATE PROTECTION IN YOUR VIEWS?

ANSWER:

Despite express disclaimers in pending legislation, that it will not affect labor or collective bargaining, the NFLPA believes that granting additional antitrust immunity to the NFL will adversely affect labor-management relations and interfere with and disrupt the collective bargaining process. Any further exemption will simply strengthen an already rich and powerful monopoly. In light of past experience, the effect will be to make collective bargaining much more difficult. It was only through successful antitrust lawsuits to protect and vindicate the rights of our members under the antitrust laws, including Mackey v. NFL and Alexander v. NFL, that the NFL even agreed to bargain with the union.

Collective bargaining with a powerful monopoly, furthermore, does not necessarily promise protection for the athlete-employee. At the table, the NFL always maintains that certain structural terms and conditions of employment, including commissioner discipline, the reserve system, the standard player contract, and the college draft, to mention only a few, will remain in full force and effect, union or no union, collective bargaining agreement or no collective bargaining agreement. The restrictions that limit player movement are set forth in the NFL Constitution and By-Laws. Given further antitrust immunity, the ability of the union to protect its members and affect their working conditions will be significantly weakened.

The NFL claims that the Ninth Circuit decsion in the Raiders case has broad ramifications affecting the league's ability to operate and make decisions in a variety of areas in addition to franchise relocation. In other words, the league seeks "clarification" by Congress to permit it to operate outside antitrust scrutiny. Clearly, the league will seize upon any further special treatment accorded by Congress to immunize other conduct that should be subject to the same standards applicable to all American business. The antitrust laws are flexible enough to accomodate any "special" needs of the NFL and other professional sports, as well as the motion picture industry, professional engineers and other businesses. All that it is required is that the NFL not unreasonably restrain competition. That is the standard applicable to all other American business - it should remain applicable to the NFL.

It is precisely for these reasons that disclaimers in proposed legislation that additional immunity is limited or will not affect labor management relations cannot provide adequate protection for athelete-employees in their collective bargaining relations with the NFL.

2. WHAT ENTITY IS BEST QUALIFIED TO EXERCISE CONTROL IN THIS AREA: THE LEAGUE, THE FEDERAL COURTS, OR LOCAL GOVERNMENTS?

ANSWER:

Professional sports leagues are best suited to make team transfer decisions so long as their actions do not constitute an unreasonable restraint of trade. Contrary to assertions by the NFL, the issue before the federal courts in the Los Angeles Coliseum - Oakland Raiders case was not whether the League and its member teams, collectively, have no voice about where another NFL team is located. The League's authority respecting team transfer was not challenged nor was it denied by the court's ruling. Rather, the Ninth Circuit decision held that the NFL rule governing team transfers was an unreasonable restraint of trade.

The question addressed by the Ninth Circuit was what role with respect to team transfers can the NFL, or its teams, legitimately pursue. The court held that any legitimate interest must be based on objective criteria. For example, will the new location impose certain burdens on other teams in the league in terms of travel or scheduling. Will the new location not produce adequate revenues. "Fan loyalty and location continuity" also could be considered. The court suggested that there must be reasonable procedures to enable the team seeking to transfer to present its arguments and have its arguments considered. Its ruling follows the precedent of other antitrust decisions which have required procedural safeguards in situations where personal animosity or caprice may motivate a decision. It was suggested to the court that to insure such fairness, the final decision on team transfers should be submitted to an impartial board. The Ninth Circuit, however, did not go that far. It simply upheld the ruling of the trial court that a three-fourths vote requirement without objective criteria is invalid under the law.

This decision, along with a long line of prior court decisions, upholds the principle that the NFL must conform its practices to the Rule of Reason under the antitrust law. NFL arguments that it is a "single entity" or akin to a partnership were rejected. The Ninth Circuit said:

> " . . . profits and losses are not shared, a feature common to partnerships or other "single entities". In fact, profits vary widely despite the sharing of revenue. The disparity in profits can be attributed to independent management policies regarding coaches, players, management personnel, ticket prices, concessions, luxury box seats, as well as franchise location, all of which contribute to fan support and other income sources."

The NFL may not violate antitrust law any more than any other unregulated business. Its complaints that they are "dammed if they do and dammed if they don't" means simply that they may be sued just as any business may for violating the antitrust law. That complaint can be made in almost any industry. It cannot be avoided unless we deny those who believe they are wronged the right to sue. It is for the courts to decide whether the complaint is valid or not. And we believe the courts should retain that function.

If the three-fourths vote requirement of the NFL applied without any objective criteria is invalid with respect to team transfer decisions, it may also be at risk insofar as league expansion is concerned. However, that issue was not before the Ninth Circuit. Of course, the NFLPA would prefer to see expansion proceed without the limitations now imposed by the League. A three-fourths vote requirement is currently mandated. The line of cases which have measured the NFL's actions against the antitrust laws all have rejected the NFL's "single entity" argument. They hold that the NFL has no greater burden in determining whether its rules or practices are invalid than other trade associations which must determine what cooperative activity is legal and which is not.

The NFL claims that unless it gets further antitrust exemption every league action and decision can be attacked and second-guessed. It asserts that this is because the sports business is novel or unique. The same claim may be made about any business. If there were any merit to Pete Rozelle's complaint then the antitrust law would have to be abolished entirely. We believe that would be unsound public policy. We oppose granting the NFL any further immunity or exemption from antitrust.

3. I UNDERSTAND THAT THERE HAS BEEN SOME DECLINE IN TV VIEWERSHIP OF PROFESSIONAL FOOTBALL GAMES. TO WHAT DO YOU ATTRIBUTE THIS AND WHAT IMPLICATIONS DOES IT HAVE FOR THESE ISSUES?

ANSWER:

A decline in television viewership of NFL games is difficult to interpret. For example, it is not clear whether such decline is temporary or permanent, or if the decline is limited to certain markets. The fact of the matter is, however, that the NFL has current contracts with the networks through the 1986 season that provide revenues to the League of 2.13 billion dollars. This means that each NFL club receives approximately 14 to 15 million dollars per year for network television rights. In addition, attendance at NFL games increased in 1984.

In 1985, network advertising rates for the Super Bowl broadcast were the highest in history - yielding approximately 1 million dollars for each 60 seconds of advertising. Of course, significant and continuing reductions in television audience share ultimately may affect the revenues of NFL teams when the network contracts are next negotiated. For the next two years, however, the amount of such revenues appear insulated by the NFL-network contracts. Thus, fluctuations in TV ratings do not now appear to affect the issue of control of team relocation.

PROFESSIONAL SPORTS ANTITRUST IMMUNITY

WEDNESDAY, MARCH 6, 1985

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 10:13 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Arlen Specter presiding.

Present: Senators Specter, Simon, McConnell, DeConcini, Leahy, Metzenbaum, and Biden.

Staff present: Deborah K. Owen, Neal Manne, Ed Baxter, Laurie Westley, Cindy Lebow, and Scott Green.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator **Specter**. We will commence this hearing of the Senate Committee on the Judiciary.

Senator Thurmond had planned to be here to preside, but asked me to announce that he could not be here because he has just been called to the White House. We will begin in his absence, but we will include in the record at this point his prepared statement. Also Senator Grassley has a statement for the record.

[The following was received for the record:]

Prepared Statement by Chairman Strom Thurmond

This morning, the committee continues its series of hearings on the antitrust issues raised by relocations of professional sports teams. Specifically, we will be examining the solutions proposed by Senator DeConcini in his bill, S. 298, and Senator Specter in his legislation, S. 172.

At our first hearing one month ago, the committee heard testimony from representatives of professional football leagues and teams, a journalist, and representatives of players' associations. The nature of the problem was clearly described—under certain circumstances, team relocations can have a devastating impact on loyal fans and local communities.

The solution to the problem is not as clear. Several questions were raised at our last hearing. Should antitrust questions raised by team movements be left to the courts under current law, or should relief be granted by Congress, either in the form of limits on antitrust remedies, or on the scope of the antitrust laws? If relief is to be accompanied by specified governing guidelines, should Congress attempt to fashion an exclusive list of criteria? Ultimately, who should make the final determination on team moves—the individual team owner, the sports leagues, or the Federal courts?

I am hopeful that the testimony of our witnesses today will assist us in resolving these complex issues. We will be pleased to hear from a second representative on behalf of the National Football League, Commissioner Pete Rozelle; the Commissioner of the United States Football League, Mr. Harry Usher; the Vice President and General Counsel of the National Hockey League, Mr. Gilbert Stein; and the Commissioner of the Major Indoor Soccer League, Mr. Earl Foreman. A representative of the National Basketball League was unable to be here today, but we hope to hear from him at a subsequent hearing.

PREPARED STATEMENT BY SENATOR CHARLES E. GRASSLEY

The recent move of the Baltimore Colts professional football team to Indianapolis, and the way that it occured in the middle of the night without any notice; preceded by the move of the Oakland Raiders professional football team to Los Angeles in defiance of the National Football League have, understandably, aroused the public's interest in whether local governments, or the NFL, should have some degree of control over changes in team location.

S. 172 and S. 298 take different approaches to this situation. Each to some extent relax the antitrust laws as they applied in the recent Oakland Raiders move to Los Angeles.

While there may very well be a need to treat professional sports differently than a manufacturer is treated under antitrust law, I would hope that each of the witnesses this morning will address themselves to one question that goes to the core of this issue; and that question is, should the federal government really concern itself with where professional football teams are located and who decides when and how to move them, and if so, why?

Senator SPECTER. This is the second hearing on sports bills introduced by Senator DeConcini and myself, my bill being Senate bill 172, and Senator DeConcini's bill being Senate bill 298.

These are two sports bills which are before the Committee on the Judiciary. There are also other bills which are being considered by the Commerce Committee. Those bills will ultimately be referred to the Senate Judiciary Committee because the underlying issue on all of these legislative proposals involves the antitrust issue which is a matter of jurisdiction before this committee.

The purpose of these hearings is to inquire as to the propriety of a limited antitrust exemption for professional football, and perhaps for hockey, basketball, baseball, and other sports, concerning the issue of franchise removals.

This matter has been before this committee on other occasions—for example, in 1982, when the Raiders moved from Oakland to Los Angeles—and there has been a resurgence of interest in this matter as the Colts moved from Baltimore to Indianapolis, as the threatened move occurred for the Eagles from Philadelphia to Phoenix, which did not eventuate, and the rumors about possible moves of the St. Louis Cardinals football team and the New Orleans Saints professional football team.

The issue is a complex one as to what standards, if any, the National Football League, for example, can establish on franchise removals, and that was the subject of the first hearing and there was extensive inquiry into the circumstances surrounding the prospective move of the Eagles from Philadelphia to Phoenix, with my own questions zeroing in on the responsibility of the National Football League for the major concessions which were made by the city of Philadelphia amounting to some $30 million to keep the Eagles in Philadelphia.

Commissioner Rozelle could not be with us for the first hearing, but he is present today, and that is a subject matter which this Senator considers very relevant in terms of what happens to a city like Philadelphia, or it could be a city like Baltimore or a city like Oakland.

My own interest did not arise in the subject with the problems in Philadelphia, but I introduced Senate bill 2821 in the 97th Congress on the Oakland transaction. I think it important to say that when this committee is considering this issue in the midst of the numerous matters which are under consideration in the Congress involving budget and Central America and arms control, et cetera, these matters have great economic impact on the country and have great economic impact on a State like mine and a city like Pittsburgh, with the Steelers and the Pirates and the Penguins, or a city like Philadelphia, with the Flyers and the Phillies and the 76'ers and the Eagles, involving millions of dollars, jobs, and a tremendous importance to the economy of a State like Pennsylvania and every State where professional football teams play, to say nothing of the enormous fan interest and the tremendous niche that professional sports have carved out in the American psyche and in American activities.

At this time, I will turn to Senator Simon, our newly elected colleague from Illinois, who has joined us on this committee.

We welcome you, Senator Simon, and defer to you for an opening statement at this time.

OPENING STATEMENT OF SENATOR PAUL SIMON

Senator **Simon**. Thank you very much. I will insert my opening statement in the record.

[The following was received for the record.]

Opening Statement of Senator Paul Simon

Sanity must be restored to the movements of professional sports teams. Every few weeks we hear another owner threatening to move a team to another town. Communities are pitted against one another and displaced at the whim of a team owner. These communities have a stake in their professional teams—a stake that deserves to be protected.

The emotional investment of a community in their sports teams are considerable. Sports teams provide an intangible—community spirit—which is vital to the quality of life in an area. Anyone passing through Chicago last year could not help but notice what the resurgence of the Chicago Cubs did for the city. This emotional bond is real and we must not let owners tear it apart as they please.

As important as the emotional attachment is the economic stake communities have in their teams. Oftentimes it was the community that built the stadium that the team plays in, the parking lot the paying fans use and provided the tax incentives when financial difficulties loomed. Communities have a real economic investment which they can not afford to lose.

Professional sports also means jobs. Many neighborhoods surrounding stadiums are largely dependent on the professional teams for their livelihood. Sports teams also provide and promote economic activity throughout a city. The economic equilibrium of a community should not be placed in jeopardy by the irresponsible actions of team owners.

We need to fashion an approach to work with the leagues to protect the interests of our communities without getting the Federal Government into the business of running sports teams.

Senator **Simon**. First of all, I am pleased to be on the committee. You will have a nonlawyer on this side of the aisle now who is a member of this committte, and who will take a real interest in what is going on.

I have a little bit of a provincial interest in this as well as a more general interest. I happen to be in St. Louis Cardinals territory. My home is in southern Illinois, hence my concern.

I think we do not want a situation where just at the whim of some team owner, a team can be moved from place to place. The economic questions that you have touched upon are obviously involved. There are sizable investments that are made by a community in having one of these professional teams.

Beyond that there is also an indefinable, unquantifiable thing called spirit that is important to a community. Anyone who was in the Chicago area when the Cubs were getting close to getting in the World Series—unfortunately, they did not finally get there—something happens to a community that is important.

There has to be some sense of order to all of this. I think we have to fashion an approach that modifies things slightly, but does not unduly get the Federal Government involved. How we achieve that sense of balance, we may learn today from our witnesses.

Thank you, Mr. Chairman.

Senator SPECTER. Thank you very much, Senator Simon.

I will turn next to our newly elected colleague from Kentucky, the distinguished Senator Mitch McConnell.

Senator MCCONNELL. Thank you, Senator Specter. I do not have an opening statement other than to say that in Kentucky we do not have a franchise to lose, but nevertheless I am very interested in the subject and look forward to hearing from the witnesses and I am certainly glad to be a member of this committee.

Senator SPECTER. Thank you very much, Senator McConnell.

Senator DeConcini.

Senator DECONCINI. Mr. Chairman, thank you very much, and I want to thank you and Chairman Thurmond for holding these hearings and welcome Senator McConnell, and also Senator Simon. I think having Senator Simon on this committee is going to be great in that he is not a lawyer.

We can use that, Paul, I can assure you. We had Senator Wallop here once before and he was a great contributor. So we look forward to your commonsense approach to some of these problems.

Senator SIMON. Thank you.

Senator DECONCINI. Mr. Chairman, the witnesses we have today for the consideration of S. 298 and S. 172 are extremely important, and I am pleased, Mr. Chairman, that we have some bills here to consider. We are going to have Mr. Rozelle, Mr. Usher, Mr. Foreman, and Mr. Stein testify today, and I have heard them before and I think they are looking at this situation with great earnest and realize a problem is facing their own franchise systems and their owners.

I think they realize that there needs to be some kind of protective measure for communities, and I think we all want to probably achieve the same thing, and that is to provide some certainty and stability in this area without overimposing government regulations.

As much as Phoenix, AZ, wants a football team, I am not about to mandate legislatively that anybody move to Phoenix, AZ. What we do want is the stability and constant concern of owners and the right of the communities to be heard and participate in the process in some way without either one being able to dictate totally to the other.

So I look forward to this, Mr. Chairman, and also the bills that are passed out of the Commerce Committee when they are referred here. We may have to have some of these witnesses back because I think we have at least four bills that are of significance in this area, some of them greatly different from each other, but some of them having a lot of common ground. So I look forward to the hearings.

Mr. Chairman, I have to go to the Appropriations Committee for about 20 minutes at 10:30 for the organization of that committee, but I will return after that. Thank you.

Senator SPECTER. Thank you very much, Senator DeConcini.

Senator Leahy.

Senator LEAHY. Mr. Chairman, I am also going to end up at that same Appropriations Committee meeting with Senator DeConcini. I am glad these hearings are being held, and I look forward to reviewing the record.

Senator SPECTER. I would just like to clarify that it is the Democratic organization of the Appropriations Committee which is meeting, so some of the rest of us who are on that committee will stay.

I would like at this time to call on the distinguished commissioner of the National Football League, Mr. Pete Rozelle. Commissioner Rozelle, we welcome you here. We thank you for taking the time to join us.

We appreciate your continuing cooperation as this committee considers matters involving the National Football League. You testified before the ccommittee at the 1982 hearings, and we thank you for joining us and we acknowledge the presence of Mr. Paul Tagliabue, your counsel.

STATEMENT OF PETE ROZELLE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE, NEW YORK, NY, ACCOMPANIED BY PAUL TAGLIABUE, COUNSEL

Mr. ROZELLE. Thank you, Senator

A league representative, Mr. Jay Moyer, testified previously before this committee, I think on February 6, and gave our views with regard to the legislation.

Senator Specter, you have been particularly concerned, or interested, actually, in the Philadelphia Eagles situation. In the Eagles situation, the NFL filed suit on December 14, in Federal court in Philadelphia, to require the team to present a clear-cut case for any move it might make from its well-established territory in Philadelphia.

In the wake of this suit, the Eagles agreed to remain in Philadelphia and have since worked out arrangements with the mayor of Philadelphia for a long-term commitment to remain in the city. I think it is to the year 2011.

Efforts have been underway by the Eagles to secure new ownership—minority or controlling. As far as I am aware, those efforts are about to result, we are advised in the press, at least, in the sale of the Eagles by Mr. Tose to new ownership. I do not know whether it involves a sizable minority share of the club or control.

Reports in this morning's Philadelphia Enquirer also indicate that such a sale is about to take place. We anticipate that such a proposed sale will be outlined to the league by Mr. Tose this next week in Phoenix, where we intend to have our annual meeting.

His daughter, Susan Fletcher, has advised me that he will have a report to give to the special committee I appointed to review the Eagles situation. We intend to carefully evaluate any proposed sale that he cites to us and be sure that it serves the interests of the Eagles in stabilizing the club, the interests of the league, and, of course, the interests of the Philadelphia area fans.

I do not want to anticipate what Mr. Usher, the USFL commissioner, might have to say later in the meeting. However, a prior USFL witness before this committee, Mr. Donald Trump, suggested that the USFL's apparent difficulties in persuading the networks to reach new or additional television contracts with the U.S. Football League can somehow be placed at the feet of the NFL. Such suggestions are irresponsible.

The NFL has not done anything to impair the USFL's efforts to assure television contracts. The USFL already has contracts with one broadcast network and the ESPN cable network.

As for the question of the additional network coverage sought by the U.S. Football League, many in the television industry have expressed the view that the USFL's problems come from two main sources: One, inadequate television viewing and ratings for USFL games, which have failed to produce advertiser interest; two, the fact that the United States Football League has removed teams from 5 of the Nation's 10 largest television markets—those being Boston, Chicago, Detroit, Philadelphia, and Washington.

Another factor that they have to consider and face up to is the matter of clearance. The first week of the USFL season, only 69 of the top 100 markets carried the broadcasts on ABC; it was at their election and only 69 elected to carry the broadcasts.

I am prepared to answer any questions you might have relative to the Eagles situation or any questions that your colleagues might have on other aspects of the bill or other matters.

Senator SPECTER. Thank you very much, Mr. Rozelle. There are a number of subjects that I would like to pursue with you preliminarily. One which we have discussed from time to time in the past, but I think it is a very important subject, is why the National Football League on the current state of the law could not establish some rules or procedures regulating the transfer of a franchise from one city to another in the context of the litigation which has already occurred involving the Raiders.

Now, I understand that the league did finally adopt some guidelines which you have called procedures. Is that the term you have applied to them?

Mr. ROZELLE. Yes, sir.

Senator SPECTER. What do those procedures amount to in the current rulemaking process of the NFL?

Mr. ROZELLE. They amount to—well, on the first point, we do not feel that anything the ninth circuit said in its decision relative to the *Raider* case gives us the right to merely establish arbitrary guidelines that would be accepted in the courts.

And we have found no one—Mr. Alioto, Mr. Davis or Mr. Cosell—who would be willing to guarantee us, financially guarantee us, against any litigation we might encounter in arbitrarily establishing guidelines. That is an answer to your first question.

Second, the procedures I established and presented to the league membership in December call for a date by which a team would have to commit to the league its desire to move its franchise to another location. I think it is January 15 of the preceding year, and then a series of matters they would have to address themselves to and present to the league as to their reasons for leaving. I will be happy to send you a copy.

Senator SPECTER. Well, those reasons involve financial loss, inadequate stadium, breach by the city where they reside?

Mr. ROZELLE. I think all three of those are included in the guidelines established.

Senator SPECTER. The thrust of the guidelines or procedures is that if the team does not satisfy those criteria, procedures, standards, then the league would turn down their application to move?

Mr. ROZELLE. Well, frankly, as it stands now, we have established them, but we have no guarantee that they will be up held by a court. So the league would have to make an evaluation; if they turned down, on the basis of those standards, a franchise move, they would have to make an evaluation as to whether they would want to defend a court case that the club or a city that was attempting to acquire them, we expect, would file against the National Football League.

Senator SPECTER. I understand that Commissioner Rozelle. So what you are saying is that although you have established those procedures, you cannot be sure on the current state of the law that they will withstand a challenge under the antitrust laws, correct?

Mr. ROZELLE. That is correct.

Senator SPECTER. And one of the things that this committee is considering that you and I have talked about extensively before and Mr. Moyer discussed when he was here on February 6 is the wisdom of having the Congress make it plain that the National Football League can follow those procedures and prohibit a team from moving if the team does not measure up to those procedures.

Would the National Football League like to have a limited antitrust exemption so that it would be plain that the league would have the authority to stop a franchise move if a team did not satisfy the standards or procedures which the league has established?

Mr. ROZELLE. Well, after spending 5 months in two trials out in Los Angeles attempting to uphold the public interest in retaining the Raiders in the city of Oakland where they had been highly successful with 12 straight years of sell-outs—the third highest revenue producer in the League—and attempting to support the city of Oakland inasmuch as they had put the stadium up and are indebted, I think, until the year 2003 for the payment of it, and during the course of that trial being told just before it went to the jury that we could not take the public interest into account, and with damages pending on appeal of over $70 million, yes, we are happy that Congress has shown some interest in the public interest and in the position we took in Los Angeles during that trial.

We would like to have it clarified. As a league, we do not like to have the bad image of a team moving when it is not justifiable. But we have over $70 million at risk attempting to establish this.

Senator SPECTER. So the answer is yes?

Mr. ROZELLE. Yes, sir.

Senator SPECTER. When you talk about the public interest, Commissioner Rozelle, you are talking about a concept that is embodied in S. 172. In the statement that I made on the introduction of the bill, and discussed that professional football is affected with the public interest and the fans do have a form of a proprietary interest when they are supporting a team, and that if a team plays in a decent stadium and the team is making money, then the owner should not be able to arbitrarily pick up and move to make more money; and that the Congress has granted the National Football League certain significant concessions in granting the antitrust exemption for the pooling of television receipts, which is a very significant factor in the success of the National Football League.

Some of us feel that it is an appropriate response to have some limitation on ordinary property interest to recognize the fans' form of a proprietary interest. Is that the kind of a public interest that you refer to in a general way?

Mr. ROZELLE. Well, I am speaking of the public interest that Senator Simon spoke of earlier where you had the Chicago Cubs captivating the city of Chicago this year; the psychological benefits, the upbeat reaction that a sports team can bring to a community.

If all factors merit the team staying, I think they should be obligated to stay if they meet all factors for being successful or reasonably successful in that community.

Senator SPECTER. So you believe there is a form of a public interest, a fans' proprietary interest, so to speak, in having a team stay in a city and there ought to be that limitation on the property rights of a team owner if the team is making money and has a decent stadium?

Mr. ROZELLE. There has to be some clarification of the antitrust laws. We did not lobby to get these bills submitted. Congress, in effect, came to the same conclusion that we did, that we expressed in the trial out in Los Angles, and they came to that conclusion after we were helpless in the move of Baltimore to Indianapolis, and the Eagles' efforts that were publicized to move to Phoenix, and the New Orleans and St. Louis uncertainty.

At that point, Congress came to the same realization that we had earlier. The public interest has to be taken into account.

Senator SPECTER. Well, Commissioner Rozelle, you did come to the Congress and the Senate in 1982 requesting hearings at that time on the Raider transaction when it was in its incipient stage.

Mr. ROZELLE. I believe late 1981 and early 1982, yes, sir.

Senator SPECTER. There were representatives of the National Football League who came to me and asked me to see if we could convene hearings in the Judiciary Committee. That request was made in August of 1982 because of the league's concern about the Raiders move and an interest in having the antitrust laws clarified at that time, anticipating the problem which arose with the Raiders.

Mr. ROZELLE. Yes, sir. Our efforts started in late 1981, I believe, on the House side, Senator. Subsequently, we came over to the Senate side. We did make an effort 3 years ago.

Senator SPECTER. Well, let me pursue for a few moments, Commissioner Rozelle, the subject of the Philadelphia Eagles. The first question I have is why didn't the league establish these procedures in advance of the proposed move of the Eagles from Philadelphia to Phoenix?

Would that not have put you in a stronger position if those procedures had been established before Mr. Tose started to make moves to go to Phoenix?

Mr. **Rozelle**. I expressed my views on those standards. We had little hope, all of our attorneys—we had little confidence, I should say, that they would necessarily be upheld if we arbitrarily established them based upon the possible sweeping effect of the ninth circuit decision in the Raider case.

Senator **Specter**. But to whatever extent they would be useful, the earlier the better. Would it not have been helpful to have had them in effect before Mr. Tose started his move to Phoenix?

Mr. **Rozelle**. It might have been; I do not know. I am not a lawyer. I do know that we filed in Federal court a suit against the Eagles' potential move on Friday, December 14, of last year.

Senator **Specter**. Commissioner Rozelle, one of the questions that I have and that you and I have discussed and I wrote to you about on December 27 is the exemption which the National Football League enjoys on pooling of television receipts and the payment, in effect, that the fans in the Philadelphia area make by virtue of being the fourth largest television market in the United States, and there is a form of a payment through that advertising, in effect.

Back on December 27, I wrote to you asking you what the Eagles' share would have been from television revenue if there had not been revenue sharing, both as to regular season and postseason games, and I have not received an answer to that question. Do you have an answer to that?

Mr. **Rozelle**. After speaking to you on that subject, I spoke to the networks. They did not want to get involved. I can tell you, based upon my experience of 25 years in the National Football League as commissioner, deeply involved in the television problem, there is no way, no way, the Philadelphia Eagles, even though they are in the fourth largest market in this country, could obtain as much as they are now from the shared National Football League television contracts.

There is no way they could obtain from regular season, preseason and their share of post season television income $16 million for televising just 16 games in Philadelphia. There is no way, but I am telling you that based on my experience and judgment.

I did talk to the networks. I said, would you write Senator Specter? They chose, obviously, not to get involved. But if you are interested in having a party other than myself, an advertising agency or anyone else, I could suggest to you that might want to have your staff consult with them. I am sure that they will tell you the same thing.

Senator **Specter**. Mr. Rozelle, I find that hard to understand and, frankly, hard to believe that where you have an area which is the fourth biggest television market, that if it got its own revenues, it would not be getting more than Green Bay, which is a small television market.

How can it be that Philadelphia would not have more revenue if it kept all its own?

Mr. **Rozelle**. Well, if we did not have a package television contract where all shared, certainly Philadelphia would get more than

Green Bay, but they would not get anything approaching the $16 million. They would make less than they are now.

Senator SPECTER. You have all the teams playing in all the markets. Green Bay and others produce less; Philadelphia and others produce more.

Are you saying that Philadelphia's share is larger than the fourth-ranking market?

Mr. ROZELLE. All I am saying is the Philadelphia television market by itself could not pay the Eagles $16 million for its regular season games. That market, even though it is the fourth—New York could not, in my opinion.

Senator SPECTER. Even the first market would not make as much money as they do under the current arrangement?

Mr. ROZELLE. That is my opinion, yes, sir, because it is the totality; it is the whole National Football League season leading up to the playoffs and then the conference playoffs and then the Super Bowl. It is a complete package, and that generates the type of money, the $2 billion we got for 5 years.

Senator SPECTER. But that totality would be in existence regardless of how you split up the pie, commissioner.

Mr. ROZELLE. It would not be in existence to the extent that the Philadelphia Eagles could get $16 million televising in Philadelphia eight games. In other words, they would not televise, I assume, if they were not sold out.

Senator SPECTER. Well, commissioner, I would like to pursue that specifically with you in terms of the dollars and cents, the total amount of money received by the league, the way it is split up, the value of the Philadelphia market contrasted to the other teams, because it just does not make sense as you have outlined it. So I would like to see an analysis, dollars and cents, market by market.

Mr. ROZELLE. I would rather see that you got a totally disinterested interpretation rather than my interpretation. I will be happy to work with you and suggest people in the business that you could consult with, because you have to understand if the Eagle games were televised in Philadelphia and they kept all of the money, they would still be competing with one or two other games that the National Football League would put in there that day.

If the Eagles were not doing well, there might be a game on another station or another network between, say, Dallas and Washington, that the fans even in Philadelphia would rather see. But I will work with your staff and suggest people that you can talk to.

I am giving you, based on my experience, what I am very certain of, but I am not objective. And I will be very happy to find someone who is neutral and work with your staff and have you develop the figures.

Senator SPECTER. Well, what you are saying is, if there were competition among televised National Football League games, then fans might choose to watch a game other than the Eagles?

Mr. ROZELLE. That is true, but even if there was no other game in the market, which there would be, the Eagles could not get $16 million for televising possibly eight league games. They would not want to televise if they had 40,000 or 50,000 people presold for the game; they would not want to televise a home game unless it was sold out. And they just could not get as much money as they get now from the league package on their own.

Senator SPECTER. All right, commissioner, we will pursue it. As long as we have the NFL's authorization to get the facts and figures, we can draw our own conclusions.

Mr. ROZELLE. Certainly.

Senator SPECTER. I have other questions, but I do not want to take more time now. I want to yield to Senator Simon for his first round of questioning.

Senator SIMON. Thank you, Mr. Chairman.

Commissioner, as you know, there are, in addition to the two bills before this committee, two bills before the Commerce Committee, one of which is cosponsored by the chairman of that committee.

I do not want to wish this fate upon you, but if, suddenly, you were a member of the U.S. Senate instead of being commissioner of the NFL, what would you favor and what kind of a bill would you like to have crafted?

Mr. ROZELLE. Of the bills presented, the bill in the Judiciary Committee submitted by Senator DeConcini, I think, goes more toward solving the total problem. And in the Commerce Committee, I would say that the bill submitted by Senators Danforth and Eagleton, and I believe cosponsored by you, Senator, comes more to addressing the total problem.

Senator SIMON. We are going to be hearing shortly from the commissioner of the U.S. Football League. Will any of these bills preclude, either the U.S. Football League or any other group that comes along, from entering the scene and being competitively healthy, or would we create through the law, a situation that is not healthy from the competitive aspect?

Mr. ROZELLE. Well, Mr. Usher will speak for himself, but I do not see how a bill governing franchise relocations, making it more difficult, or revenue sharing or approval of our league rules concerning ownership, would have any bearing on the U.S. Football League. But he will have to address himself to that.

Senator SIMON. I have no further questions at this time, Mr. Chairman.

Senator SPECTER. Thank you, Senator. Senator McConnell is not with us, so back to me.

Pursuing the question concerning the concessions made by the Philadelphia Eagles and the current status of the Eagles, I have written to you, Commissioner Rozelle, expressing my concern about having a team which is substantially in debt continue to operate a National Football League franchise because of the consideration that the ability to pay top talent bears very heavily on a team's success, and therefore its attendance and its ratings, and that if the franchise is to be owned by someone who is very heavily in debt, then the future of the Eagles might be very bleak and they might start to lose money and might have a basis to move out of Philadelphia even under the procedures that you have established in the NFL or the guidelines and standards which are in Senate bill 172 which I have proposed.

So I think it is important to have an update regarding what the status of the Philadelphia Eagle franchise is right now with respect to the possibility of sale, who is going to own it, and so forth.

Mr. ROZELLE. What I know is that the Eagles have told me that Leonard Tose will make a report in Phoenix this weekend to the three-man committee I established to deal with the Eagle problem, and what I read this morning and have read the last couple of days in the papers concerning the possible closing of an arrangement wherein the Eagles would be sold, all or in part, to an individual from Miami.

On your concern of financing, the league has always been concerned about that. In other words, you might have a club sold to someone who would heavily leverage it. We attempt to minimize that problem by seeing that it is not as heavily leveraged as perhaps the buyer would want it to be because the National Football League, the owners, share your view that you want to have a club with the financial capability to compete.

That has been our mode of operation for years. We do everything we can to keep them able to compete in sharing television, in sharing gate receipts. I think that over 90 percent of the money taken in by the clubs in the NFL is in some form or other shared.

So we are concerned about the financial structure of each club. We want to make it possible for each one to have the tools to compete equally with all other clubs in the league, and that is why we investigate ownership so carefully.

That is why we have asked that approval of our ownership, rights of approval, be included in such a bill because we are subject to litigation if we turn some individual down because, in our opinion, after careful investigation, we find that it is very debatable whether he has the money to service his debt, to put money into the club, and to have the club competitive and aggressive.

That is why that is included, I think, in several of these bills.

Senator SPECTER. Commissioner Rozelle, when you established this three-man group to review the Eagles situation, what kind of a timeframe did you establish at that time? Was it not 45 days to come to a conclusion?

Mr. ROZELLE. We met in, I believe it was January, with Leonard Tose, the committee. The committee first met just themselves and the next day they met with Leonard and his daughter, Susan Fletcher.

We reviewed the whole situation with Leonard and we reached agreement with Mr. Tose relative to certain steps that would be taken by Mr. Tose and by the league, and it was predicated on the league giving certain financial assistance to Leonard Tose insofar as advancing sums from 1985 television to help cover any cash shortfall in the offseason.

And it was contingent on the Crocker Bank going along with the Eagles during this Spring while they attempted on their own to either sell to a minority partner or sell control. That was an agreement we reached with Mr. Tose.

However, the bank refused to accept the arrangements contained in that agreement, so it was dropped.

Senator SPECTER. Well, commissioner, under the terms of one of your arrangements with the Eagles, was there a provision that if

Mr. Tose did not work out his financial problems or sell to another party, that the league would have the right to take the franchise and make a sale of the franchise?

Mr. ROZELLE. Yes.

Senator SPECTER. And what happened with that agreement?

Mr. ROZELLE. Well, that agreement was negated by the bank because the bank would not permit the advance of television money this spring to the Eagles, and they would not commit to any period of time that we had arranged with Mr. Tose where he would have the opportunity to sell to a minority purchaser or to sell control of the club before the league moved in.

The bank just did not accept the terms and advised us by letter that they would not.

Senator SPECTER. So even though the NFL and Mr. Tose had worked out an arrangement where the NFL would have had the ultimate right to sell the franchise if Mr. Tose could not work out his problems, Crocker Bank refused to agree to that and the arrangement was therefore not completed?

Mr. ROZELLE. Well, representatives of the league itself, including myself, met with the Crocker people to outline the arrangement and ask that they go along with it. And they later notified us by letter, and the Eagles, that they could not accept the terms of the arrangement we had made with the Eagles.

Senator SPECTER. What did they object to, just the fact that you were advancing funds from television receipts?

Mr. ROZELLE. They really did not explain completely. They just said that they would not accept the terms of the agreement. We have been able to get very little information from the bank or from the Eagles as to what the current arrangement is with the bank.

Senator SPECTER. Commissioner Rozelle, are you a guarantor, in your capacity as commissioner of the National Football League, for the obligations of Mr. Tose to Crocker?

Mr. ROZELLE. Not legally, no.

Senator SPECTER. What do you mean, not legally?

Mr. ROZELLE. Well, we feel we are essentially a partnership. When you asked whether we are legally obligated, I would say no.

Senator SPECTER. Well, have you signed certain papers that Mr. Tose has with the Crocker Bank? Does your name appear on certain of the documents as a party signatory?

Mr. ROZELLE. Every loan agreement executed by a club in the league with a lending institution, we have a signed agreement with the bank advising that should they foreclose—now, this goes for every team in the league; I have signed a number of them—if they should foreclose, they recognize the league's right to approve new ownership rather than the bank, which I do not think they would want to do, running a club or perhaps selling it to someone not satisfactory to the league.

Senator SPECTER. Well, if there are rights which run to the league, that would not require your signature as president of the league. Are there no obligations on the part of the league that you have signed making your signature necessary for the document?

Mr. ROZELLE. No; just what I have referred to.

Senator SPECTER. Customarily, as a legal matter, people do not sign documents unless they undertake certain obligations under a document. If you are the beneficiary or the recipient of a clause, you do not have to sign.

Mr. ROZELLE. Well, the banks have accepted right along our right to this clause. Otherwise, we say that, you know, we could cause trouble in the club getting the loan. So what we have done is get the banks to agree, and none of them, in fact, want to run a club, so we have had no difficulty.

They merely acknowledge the league's right to approve any new ownership that might take place because of the bank's foreclosure on the team.

Senator SPECTER. Mr. Tagliabue, because this is a legal issue, I would just like your own judgment—and Commissioner Rozelle is not a lawyer—just to confirm that the league has no obligations under the arrangements between Mr. Tose and Crocker Bank.

Mr. TAGLIABUE. Well, I could not sit here and pretend to remember every provision of every bank loan agreement that I have seen in the last 15 years, which is part of the problem.

The commissioner is absolutely correct that the league is not a guarantor of funds extended by Crocker to the Eagles. Whether there is some respect in which the league has some obligation, I really could not say without reviewing the agreements.

The main thrust of the agreements is, as the commissioner has said, from a business standpoint and a legal standpoint, to have the recognition by the bank that any sale on foreclosure would be subject to the league's ownership standards and to league approval, as provided in our bylaws.

As for why it is signed by the league, I think the bank just wants, in effect, a representation or an assurance that we are aware that they are making this loan agreement and that we mutually acknowledge that they have agreed to comply with our bylaw provisions in that limited respect.

Senator SPECTER. But as of this moment, you can think of no obligation by the league to the Crocker Bank?

Mr. TAGLIABUE. Not that I am aware of.

Senator SPECTER. All right. If you would review the document just to confirm that, I would appreciate it.

Mr. TAGLIABUE. I would be glad to do that and get back to you.

Senator SPECTER. All right. I have other questions, but I would yield at this time to Senator DeConcini and I will resume questioning when my turn comes again.

Senator DECONCINI. Thank you, Mr. Chairman. I know my ranking member is here. If he has an opening statement——

Senator BIDEN. No.

Senator DECONCINI. Fine. Thank you, Mr. Chairman.

Mr. Rozelle, you went into the NFL lawsuit with the Philadelphia Eagles while I was here in your opening statement. If you said this, I will look on the record. What is the present status of that lawsuit?

Mr. ROZELLE. It is just lying there; it is filed. We have not withdrawn it and we will take up the matter of pursuing it should the Eagles, by some chance, move from Philadelphia. But they have committed publicly and signed a lease to stay in Philadelphia, and so I assume that it will be moot.

But when everything is signed and over and we are certain it is over, we will withdraw the suit.

Senator DECONCINI. Now, just for clarification, Senator Specter asked you about the ninth circuit court decision regarding the Raiders as to if there was not enough in that decision indicating that the NFL could indeed set standards for ownership removal.

Notwithstanding having Judge Cosell here lecturing us on that at some length, there was considerable opinion that that is not the case, and today you indicated that you felt that if you did that, you could be facing substantial financial lawsuits and perhaps liability under that.

The figure of $70 million was raised, I believe. Where does that figure come from?

Mr. ROZELLE. Well, it is on appeal, but the court in Los Angeles assessed $49 million treble damages, so roughly $50 million, for the Raiders and the Los Angeles Memorial Coliseum in damages.

Senator DECONCINI. Against the NFL?

Mr. ROZELLE. Plus interest, plus attorney charges. That is being appealed, but I guess the ballpark figure would be, as to our obligation now, about $70 million, pending appeal.

Senator DECONCINI. So your concern is that if you went and set rules which the decision did not specifically tell you you could do, only reference to it, your concern is about another lawsuit by another owner, facing the same potential liability?

Mr. ROZELLE. Yes. We were faced with that in the case of the *Baltimore Colts* move to Indianapolis. The league did not approve it; they did not disapprove it. That came a short time after the *Raider* case and we just listened and did nothing.

Senator DECONCINI. Because you were helpless, as far as you were concerned?

Mr. ROZELLE. We had already given at the office.

Senator DECONCINI. Thank you. Now, Mr. Rozelle, the bill that I have introduced creates an exemption for the NFL revenue sharing practice. Can you briefly tell us how that works and what it means to the league for the record?

Mr. ROZELLE. It is paramount to the success of the National Football League. There is no way we could have a competitive league if we did not share income. If the teams in the cities of the major markets—Los Angeles, New York, Chicago, Philadelphia—if we did not have sharing and they made all of their own television arrangements, they would get less than the $16 million. I talked it out before with Senator Specter.

But they would get so much more by size of gate and perhaps by television than Green Bay, St. Louis, that we could not have a competitive league. Now, I read that baseball is attempting to go in the same direction. They are attempting to extract money from some of these individual club cable deals and toss it back into the pool for all members of baseball.

They are attempting to get somewhat more stabilization of income rather than the teams that are on a superstation, as it were, extracting strong dollars and the other teams being limited to, say, their local market. They are attempting, as I say, to go in the direction that we have gone.

Senator **DeConcini**. Of course, baseball is totally exempt, so they can do whatever they want.

Mr. **Rozelle**. Yes, sir, they are exempt from antitrust.

Senator **DeConcini**. Yes. What would you think of a formula that gave the top tier of the league teams slightly more and the bottom tier slightly less? Is there an assumption that the teams would be more willing to spend more and compete more for free agents?

Mr. **Rozelle**. If they have the money, they will spend it. We got $2 billion for the television and everyone felt that they were in good shape back in 1982. But they have certainly been aggressive in signing players and have given most of it back.

Senator **DeConcini**. I am concerned. Maybe you can help the committee, both Senator Specter——

Senator **Biden**. Senator, would you mind restating a question or maybe allowing me——.

Senator **DeConcini**. My question was what——

Senator **Biden**. Excuse me; let me be specific. On the issue of explaining the revenues, you asked the commissioner to explain how the revenues were shared and I thought the commissioner said that if, in fact, they were not allowed to have the situation as it exists now, the Green Bays and the St. Louis's of the league would become noncompetitive. Is that right?

Mr. **Rozelle**. Yes, if they could not share gate receipts. In other words, if the big-city stadiums, say, New York—they have, I think, 78,000 seats. The Jets and the Giants play in a stadium that has 78,000 seats.

Senator **Biden**. Right.

Mr. **Rozelle**. Green Bay is about 55,000.

Senator **Biden**. Right.

Mr. **Rozelle**. So if each team kept their home gate receipts, there would be a tremendous differential between the top group and the lower group.

Senator **Biden**. For the record, tell me, if you do not mind, because it goes to your bill——

Senator **DeConcini**. I yield.

Senator **Biden**. And I am not sure which of you is correct.

Senator **DeConcini**. I can tell you. [Laughter.]

Senator **Biden**. You can tell me.

How do television receipts work?

Mr. **Rozelle**. Television receipts are shared equally—the league contract for certain preseason games and the regular season and the postseason.

Senator **Biden**. OK, and the reason for that, again, is absent the ability to do that, competition would evaporate within the league because some teams would, in fact, have access to major markets. I mean, is that the argument with regard to television, also?

Mr. **Rozelle**. Television now represents about 60 percent of the income that each club has. So if you are not going to have sharing and each club has to go out and make its own television deal, use Green Bay as an example. I am just giving rough estimates.

Senator **Biden**. Sure, right.

Mr. **Rozelle**. I have no basis for this, but let us say they could get—for televising around Wisconsin, they could get, say, $7 million, whereas a big-city team could get $10 million. And I do not know that my figures are right; I am just using that as a comparison.

Senator BIDEN. I understand the point you are making. The last question I have is, you said baseball is in a position now where receipts from cable television are not shared in the pool. Is that correct?

Mr. ROZELLE. They were not in the past.

Senator BIDEN. Not in the past, OK.

Mr. ROZELLE. But I have read that they are going in that direction so that the individual clubs that are on a superstation and take that money directly will have to share some of that money with the other teams in the league.

Senator BIDEN. Now, my question is this: Your argument for the ability to continue to handle television on a league basis and share gate receipts on a league basis is that it is necessary to foster competition within the league?

Mr. ROZELLE. On the playing field, yes.

Senator BIDEN. On the playing field. It seems as though there is healthy competition on the diamond in baseball, and they do not have the situation you have. Does that not go against your argument for the need to share in the receipts?

Atlanta is not dominating baseball, and yet you all are making the case that—I imagine if it was football, you would be in here saying the Falcons should not cut their own deal, right?

Senator DECONCINI. If the Senator would yield for clarification, baseball could enact, because they are totally exempt from antitrust, such regulations if they wanted to.

Senator BIDEN. I understand that.

Senator DECONCINI. That is the only thing we are talking about here.

Senator BIDEN. Well, what concerns me and why I am in a quandary about what, if anything, we should do legislatively is that I have trouble being convinced of your argument that quality of competition on the playing field would dissipate absent the present arrangement that the NFL has.

And you give a very strong argument for that, and the essence of the argument is that we have to share in television receipts leaguewide and we have to share in gate receipts leaguewide. If we did not, there would not be quality competition on the field.

Now, you then turn around and look at baseball. Baseball is not sharing in all aspects of—well, let me put it another way. Let me put it this way: Tomorrow, if the Falcons cut a deal—if they could, under the law, cut a deal with Ted Turner's super-whatever, their own deal, would you not be before us saying that, in fact, you should be allowed to prevent them from cutting their own deal because it will affect the quality of play?

They will have greater receipts; they will end up being the predominant team, right? Would you not say that to us?

Mr. ROZELLE. We probably would be if our bylaw was challenged by the Falcons and we went to court on it and they won, because we have a provision in our bylaws that all television is shared equally.

Senator BIDEN. Right.

Mr. **Rozelle**. That is what the league voted on, the member clubs.

Senator **Biden**. And the reason they did is because the argument is it is the only thing that keeps competition. I assume there is no other rationale for it because you are not anticompetitive people; you are all good Americans.

Mr. **Rozelle**. The teams are competitive as hell on that football field.

Senator **Biden**. Right.

Mr. **Rozelle**. But they are partners off the field. Now, the league learned this through long experience. I am going back to the early 1930's when about three teams dominated the National Football League—the Bears, the Packers, the Giants, and occasionally the Redskins—every year.

That is why the fathers of the NFL put in the draft to give everyone a chance to have a fair shot at the talent. Later on, they established 60-40 on gate receipts, 60 for the home team, 40 for the visitor—again, sharing.

When television came on in the early 1960's and we had pooling, we shared the television equally.

Senator **Biden**. Right. I understand.

Mr. **Rozelle**. I cannot speak for baseball; I do not like to, but they have been quoted as saying they have eight franchises for sale; that 20 of the 26 lost money last year. I have seen those quotes, but I do not want to speak for baseball. You would have to investigate them as a separate sport.

But we feel, and we think we have proven, that sharing income is so important to the National Football League.

Senator **Biden**. Well, I have trespassed on your time too much.

Senator **DeConcini**. That is all right.

Senator **Biden**. But it seems to me I do not think the American people are upset about the lack of competition in baseball. I am not; I am a baseball fan. I am not upset. I am upset the damned Phillies do not win more, but I am not upset about the fact that there is lack of competition.

So all I am saying to you is, in fact, you had a situation where baseball were not sharing in the receipts from television and football is sharing in the receipts from television and you argue that the only way you can maintain competition in football is to share receipts in competition and you have competition in another sport where they do not share, it seems to me to go against your argument.

Mr. **Rozelle**. Mr. Tagliabue would like to speak on that, but I will say that if you were in Seattle or Minnesota or a number of other baseball cities I could name, rather than Philadelphia, I think you would feel differently, Senator.

Senator **Biden**. OK.

Mr. **Tagliabue**. Senator, the problem is not just the quality of competition on the playing field. That is a simplistic view and that is not the argument.

Senator **Biden**. You are the one that said quality of competition on the field.

Mr. **Tagliabue**. You have been referring to the quality on the playing field, but the argument goes as Senator——

Senator BIDEN. No. Let us read back the record, then. Let us go back and get the record read. Did you say——

Mr. TAGLIABUE. I will withdraw what I said.

Senator BIDEN. All right.

Mr. TAGLIABUE. But the argument has to do with the stability of the league and the financial stability of the individual teams and the number of teams in the league and expansion of the league, and the difference flows——

Senator BIDEN. All the things you have been really promoting.

Mr. TAGLIABUE. The difference flows from the relative number of games that are played in baseball, which is 162, versus 16 in football; the relative emphasis on gate receipts as against television in the two sports; that fact that as you look into the latter half of the 1980's and into the 1990's, an NFL team, as compared to baseball, could only generate locally in its market 1 out of every 3 dollars it needs to break even; and that 60 percent of the revenues for the average team today flows down from the national network package because of the way it is sold and the product that is sold nationally.

So what we are talking about is not an argument which is limited to quality of play and comparability of the team strength on the playing field. It is an element of the issue, but it is not the only point. The other point has to do with the different financial structures of the two sports, and it has to do with reality.

A team today in an average NFL city such as Atlanta, as it looks ahead to its future in the next 5 years, can see itself raising 1 in 3 dollars locally of the dollars it needs to survive.

An expansion team, without the sharing of the network revenue, would start with $1 in its pocket, where it needs 3 to survive. So it has to do with the financial structure of the league.

The number of cities in the country that can support teams—you simply cannot support an NFL team at current levels of cost in small communities without the advantage of the national television audience contributing to those costs.

Senator BIDEN. Why have you not been expanding the league more rapidly, then?

Mr. TAGLIABUE. One of the reasons is we have been sued in court for the last 7 years as to whether we can continue to enforce these very rules.

Senator BIDEN. That is the reason why you have not been expanding?

Mr. TAGLIABUE. That is one of the reasons. We have been in court for 7 years now defending these very rules.

Senator BIDEN. What are some of the other reasons?

Mr. TAGLIABUE. Among the others are that costs have been escalating for various reasons. There are also 44 football teams in the United States today. There are multiple reasons, but one of them which has barred expansion has been that we have been in court for 7 years defending these very principles, including team stability and including the revenue structure of the league.

Mr. ROZELLE. Senator, we have the largest league. We have 28 teams.

Senator BIDEN. I understand that.

Mr. ROZELLE. There is no other sport that has 28 teams.

Senator BIDEN. I understand that.

Mr. **Rozelle**. And we have expanded continually. We last expanded with Tampa Bay and Seattle and we plan to expand two more.

Senator **Biden**. Is not the reason you do not expand is that the owners, in fact, feel they are going to get cut? A piece of the pie gets cut. That is not the reason?

Mr. **Rozelle**. It has not worked that way when we have expanded.

Senator **Biden**. I did not say how it worked. I am just asking a question. I am a novice; I do not know.

Mr. **Rozelle**. The answer is the litigation we have had for 5 to 7 years, including pending litigation right now.

Senator **Biden**. Well, I do not believe you, with all due respect. [Laughter.]

But then, again, I might point out to you that I do not know much about this.

Mr. **Rozelle**. I appreciate that.

Senator **Biden**. I really do not, but I find some of your claims somewhat disingenuous, but then again hopefully for you all, I will not get very interested in it. [Laughter.]

Senator **DeConcini**. I thank the Senator from Delaware for his objectivity and openmindedness on this, not having decided on either one of these bills.

But let me ask, Mr. Rozelle, along that line, if you take the National Basketball Association, they do not share revenues, to your knowledge, do they?

Mr. **Rozelle**. Not to the degree that the NFL does.

Senator **DeConcini**. Yes; and, of course, there are three or four top teams that seem to be there all the time, which I think bodes well for the idea of revenue sharing.

Mr. **Rozelle**. I believe in basketball, the home team keeps all gate receipts. The visitor gets nothing; at least that is the way it used to be.

Senator **DeConcini**. Now, in baseball, they have a total exemption. If they want to, as owners, adopt a rule to share receipts, they can do so without any antitrust threat. Is that your understanding?

Mr. **Rozelle**. They would have no antitrust risk, yes, sir.

Senator **DeConcini**. Yes; and you in 1961—the NFL, meaning "you"—were granted such an exemption only for television, is that correct?

Mr. **Rozelle**. Yes; all sports. It is cited as the NFL rule, but it also enables basketball, hockey——

Senator **DeConcini**. They could, if they wanted to, adopt local rules within their membership to share television receipts. That is what the exemption did in 1961, without being in violation of antitrust?

Mr. **Rozelle**. That is correct. It enabled all sports to do that.

Senator **DeConcini**. All sports to do that. The NFL elected to do that under the 1961 exemption. So if you elected not to, and if the Senator from Delaware's proposition might be correct that there might be more competition, you could change that if your owners elected to do so?

Mr. **Rozelle**. We could change it.

Senator DECONCINI. And obviously the business judgment has been that it is better this way.

Mr. ROZELLE. Very much so.

Senator DECONCINI. Let me ask you something that is near and dear to a number of us, which the Senator touched on, and that is expansion. If legislation were enacted which could create the kind of antitrust exemption embodied in either Senator Specter's bill or mine, what would be the NFL's position on expansion?

Mr. ROZELLE. We will expand by two teams when we can be assured legally that we will have the right to pick the owners, pick the places we are going to expand, and they will stay in those places, and that other pending business and legal problems are clarified.

Senator DECONCINI. In other words, you are satisfied if you have the right to approve the ownership and the place to go and if there are some restrictions or some procedures that the team cannot get up and leave overnight without your approval or some procedure. Is that correct?

Mr. ROZELLE. What we need is stability, and I also qualify that to the extent of other pending legal problems.

Senator DECONCINI. Now, along that line, it leads me to think that you are also talking about clearing up the USFL litigation before you might expand. Is that correct?

Mr. ROZELLE. They are suing us for $1.3 billion.

Senator DECONCINI. Well, is that correct? Am I correct that you would not consider expansion until the USFL lawsuit is settled?

Mr. ROZELLE. While that is pending, it would be very difficult for us to expand in the face of that litigation.

Senator DECONCINI. Because it means that it may be 5, 7 years if we pass this legislation, Senator Specter's or mine, today?

Mr. ROZELLE. It would clarify things. It would be a step forward for achieving stability, but we would still have other business factors, mainly the legal factor I mentioned, that would have to be clarified because if we were going to expand, all of the logical markets now have U.S. Football League teams that I can think of without reviewing them.

Senator DECONCINI. You could find one perhaps that did not if you really were committed to expanding, or you could even expand and make one of those teams part of your NFL, if you elected to.

Mr. ROZELLE. I think that the other teams in their league would have a pretty good shot at that $1.3 billion suit if we did that.

Senator DECONCINI. Well, I will tell you what concerns me. I am into this proposition firmly believing that you need clarification of that ninth circuit decision against you in the *Raiders* case. It is not a stable atmosphere here for football teams to be jockeying around with one city offering something else, even though our city has been involved in that.

I am interested in being able to move if it is good business and you have some rights to approve it, and when I say you, the NFL, but also encouraging the NFL to promote expansion to good business judgments. I hope that my part of the country would qualify.

But, now, if your position is that you must also have clarified the lawsuit of the USFL, it seems to me like you are asking us to put this on hold for a long, long time because you may have another lawsuit after the USFL is finished. And if you are always going to be afraid or over-concerned about expansion due to litigation, it seems to me like you are inviting anybody, including Mr. Cosell or anybody else who does not feel too receptive to the NFL, to bring litigation.

If that is really your policy, Pete, it would seem to me like you have a pretty good rationale that, oh, we cannot expand, and I think that is going too far, as far as this Senator is concerned.

Mr. ROZELLE. Well, I would like to have Mr. Tagliabue discuss this because it is a legal situation. We follow the advice of our attorneys on litigation and business practices if they are of major importance, and I would like to have him discuss that, if I may.

Senator DECONCINI. This will be my last question. I am sorry, Senator Specter, for taking so much time.

Mr. TAGLIABUE. Well, Senator, I do not know that the USFL case rules out expansion even to cities in which they are located. There are some antitrust lawyers like Mr. Alioto who say that it does not, and he has proven right in one case and we have proven wrong in one case so far.

So I think it really is a question that would have to be looked at carefully at the time that you would be considering it. In other words, I really think it is hard to sit here in 1985 and make the absolute statement that expansion would be impossible or that it would be possible in light of that case.

We would be glad to talk further to your staff and to you about that case in relation to these problems.

Senator DECONCINI. It just seems to me, Mr. Rozelle, it would help this committee, realizing the owners would have something to say about expansion, if there was some indication from the Commissioner's office that expansion was a high priority of recommendation of policy because of the interest of this sport and the interest of locations to have expansion.

But I kind of get just the other feeling from you that expansion is not a top priority. The top priority is to have no litigation; have our legislation and have no litigation so everything is just nice and smooth, and then, and only then, are we going to look at expansion.

Mr. TAGLIABUE. Well, I think the league stated publicly in the mid-1970's when they expanded to Tampa and Seattle that further expansion was a priority of the league. And I think, also, we are not——

Senator DECONCINI. Is that the position now?

Mr. ROZELLE. We wanted to get to 30. We want to add 2 teams and get to 30, and we would have to evaluate the situation, as Mr. Tagliabue said, based upon the current status of litigation and the law.

Senator DECONCINI. Thank you, Mr. Chairman. I can only add that I am not overly convinced that the policy of expansion is high on the priority as much as being sure you have no litigation and everything is beautiful, because it seems to me if Congress can work our will here and pass something that is advantageous to communities and you must give some consideration to it, and it is advantageous to the NFL owners that they can keep control of who is going to be part of that partnership off the field, but also have to give consideration to the local community needs, I would think that the policy ought to be that, hey, we really have succeeded here; thank you, public representatives who represent the constituents across this country, and now we are ready to expand and provide better service of this great sport.

Mr. ROZELLE. Senator, I wanted to be candid with you. That is why I expressed myself the way I did.

Senator DECONCINI. I appreciate that.

Mr. ROZELLE. It is difficult for me, when this league is subject to some $70 million in damages for trying to protect the public interest, trying to control franchise relocation when it was not justified, to say that we will expand into any market we want to.

And then the owners say, well, let us talk about this now; what risk is there in this? They are somewhat gunshy. I am honest with you, rather than saying, "We will expand by 2 in 3 years. You pass this bill and that will do it; we will do it." I am being honest with you.

Senator DECONCINI. I appreciate that.

Mr. ROZELLE. It is hard for me to go to 28 owners, when they have just taken a bath for $70 million, subject to the appeal, and say let us do something else that has some risk.

Senator DECONCINI. Well, I can appreciate that. It is just hard for us here to grant an exemption on antitrust to assist a national sport in proprietary interests and consider community standards at the same time when it does not appear to this Senator that we are going to expand the availability of national football.

And that, to me, is part of the motivation of such legislation to bring that stability.

Mr. ROZELLE. Part of it would be, I think, and the other part would be bringing some stability to franchises who have considered movement.

Senator DECONCINI. Thank you, Mr. Chairman. Thank you, Mr. Rozelle.

Senator SPECTER. Well, that is precisely where I want to pick up, on providing stability for franchises which are considering moving and, as Senator DeConcini talks about, the interests of the local cities, and a subject that I picked up with Mr. Moyer when he was here on February 6 that I want to pursue with you, Commissioner Rozelle, that I told you that I would pursue with you in terms of what the National Football League could have done to protect the interests of the Philadelphia fans and the city of Philadelphia when you finally did promulgate the procedures.

It seems to me that you could have promulgated them earlier. I know that you sued the Philadelphia Eagles on December 14, but by that late date—you did not have procedures until immediately before that time, and the city of Philadelphia ended up with $30 million in concessions, which was really a form of blackmail payment to keep the Eagles in Philadelphia.

The concern that I have is what the National Footbal League was doing. It seems to me, and I know your lawyers disagree with this, that there was latitude under the Federal court decisions where they talked about not having a requirement of three-fourths of the owners to approve a move. They talked about majority; they talked about standards.

When the critical discussions were underway between the officials of the city of Philadelphia and the Eagles that you knew were underway, the league could have participated to help keep the Eagles in Philadelphia so that the city would not have had to make $30 million in concessions.

Even as we sit here, we do not know if the city can deliver on that, if they can sell the bonds for the sky boxes, or if they do deliver $30 million in concessions to the current Eagle ownership that that is going to be sufficient, or who is going to own the Eagles next.

It seems to me, very much along the lines that Senator DeConcini suggests, that the league has to be a little more aggressive here in protecting a franchise like the Eagles in Philadelphia.

Mr. **Rozelle**. Senator, one, we filed suit in Federal court when they were thinking of moving the franchise. That was quite a risk, if we were to follow through on it, based upon our experience in the ninth circuit in California.

Two, the only thing we knew was what was being publicized; that the mayor of Philadelphia was talking to the Eagles about banking loans.

Senator **Specter**. Well, Commissioner, how about that? When did you first talk to Mayor Goode?

Mr. **Rozelle**. Oh, I met him and talked to him, I think, probably in May 1984, and then I saw him, I think, in June at a league meeting we had here where we had Super Bowl presentations.

Senator **Specter**. When did you talk to him in the sequence of events leading to the NFL's filing suit on December 14, 1984?

Mr. **Rozelle**. He called me. To explain, I was reading in the paper that the mayor was involved, attempting to get financing or a possible minority owner for the Eagles. That was what was being printed in the paper, and I have clippings on it. The mayor called me.

Senator **Specter**. What date did he call you?

Mr. **Rozelle**. The mayor called me, I believe, about the 12th or 13th, and he only asked me about league ownership policies, a very general question. And it fit with what I was reading that they were working on getting a minority owner or financing for the Eagles.

The next thing that happened was on Saturday night, December 15, the day after we filed suit in Federal court.

Senator **Specter**. He only talked to you once prior to the time you filed suit?

Mr. **Rozelle**. Yes, once, and not on that subject of negotiations that he was undertaking that weekend with Leonard Tose. It was solely on the subject of what the league's ownership policies are.

And then he called me—Leonard Tose called me first, about 7:45—7:30, 7:45—Saturday night, the 15th, and he told me that Mayor Goode would be calling me shortly and that they had an arrangement they had concluded with the mayor.

About 20 minutes later, the mayor called me. He did not go into total specifics, but he said that they had concluded an agreement with Leonard where they would have an extension of the lease and the Eagles would stay.

About an hour-and-a-half later, they held their press conference in Philadelphia and some of the details were printed the next day, Sunday, the 16th, and Monday, the 17th, concerning the arrangement they had made.

Now, they also made a similar arrangement with Philadelphia, with the Phillies. They gave the Phillies over $1 million more in improvements and benefits than they gave the Eagles in return for a firm extension of the lease, I believe in both teams' cases, until the year 2011.

Senator SPECTER. So you are saying, commissioner, that the first inkling you had that the city of Philadelphia was making any concessions to the Eagles was on Saturday, December 15?

Mr. ROZELLE. That is absolutely correct, about an hour-and-a-half before they made the announcement to the press.

Senator SPECTER. Did you not have a pretty good idea that that was in process?—that the city was undertaking that to keep the Eagles there in the face of the impending move?

Mr. ROZELLE. I did not. The total impression I had was what I read in the papers. Mayor Goode was working with local banks, as I believe he did in the first instance before he began negotiating the improvements with the Eagles. He was working with local banks; he was attempting to find a local minority buyer.

Senator SPECTER. Did you make any inquiry of Mayor Goode or any city of Philadelphia official as to what was going on?

Mr. ROZELLE. I did not.

Senator SPECTER. You did not think you had a duty to do that to see what was happening to the city of Philadelphia on a potential move by the Eagles because the league could not control the situation?

Mr. ROZELLE. Our whole thrust was preparation of that lawsuit that we filed on Friday, December 14—planning for that and filing it. We felt that was the only thing that we could do that would be a strong deterrent to the Eagles moving if they did decide to move.

Senator SPECTER. Commissioner Rozelle, why do you think you need another exemption for revenue sharing from Senator DeConcini's bill when you already have it in the 1961 legislation?

Mr. TAGLIABUE. The 1961 legislation does not refer to revenue sharing in the statute. The legislative history refers to the fact that it was the league's intention to pursue a policy of sharing the revenue.

The statute deals with the separate question of selling the rights to a television network. In other words, Senator, there are two sets of agreements that are involved here in the structure of the league. One is——

Senator SPECTER. Is there any question, Mr. Tagliabue, at the present time that revenue sharing is legal?

Mr. TAGLIABUE. I am sure in the minds of a lot of plaintiffs' lawyers there is a question as to the legality of network television revenue sharing—yes.

Senator SPECTER. Are you a plaintiff's lawyer?

Mr. TAGLIABUE. I have been on occasion.

Senator SPECTER. Is there a doubt in your mind?

Mr. TAGLIABUE. I would argue vigorously that the network television revenue sharing is lawful, but it is not because of the statutory authorization to do it.

Senator SPECTER. Has anybody sued you over that?

Mr. **Tagliabue.** No, but no one sued us on team relocation until 1978 either.

Senator **Specter.** But it is functioning; you have revenue sharing and nobody is challenging it at the present time?

Mr. **Rozelle.** No, but I will say that in the *Raider* case in Los Angeles, there was considerable testimony that the *Raider* move to Los Angeles, at least in part, was predicated on the *Raiders* going on pay television.

Senator **Specter.** If the exemption that Senator DeConcini is proposing is adopted, is there any latitude that the NFL will be able to put into effect pay television?

Mr. **Rozelle.** It does not authorize or enable us to go into pay television at all. It just says that we can share income equally.

Senator **Specter.** You do not think that there is any possibility that the legislation by Senator DeConcini opens up the pay television avenue?

Mr. **Tagliabue.** There is a specific provision in Senator DeConcini's bill which is designed to draw a distinction between internal revenue sharing agreements and external agreements for television contracting. I forget the provision of it, but it is a disclaimer which was in Senator DeConcini's bill in 1982 and it is there today. It is section 3(d), which draws a distinction between an internal agreement within the league on the sharing of revenues, which the bill does cover, and the external patterns of contracts with networks and other parties that have to do with television contracting.

The purpose of it is to make clear that this does not change the law in any respect with respect to television contracting in any way, shape or form, network, pay, cable, or whatever.

Senator **Specter.** Thank you very much, Mr. Rozelle. I appreciate your being here. Thank you, Mr. Tagliabue.

Mr. **Rozelle.** Thank you, Senator.

Mr. **Tagliabue.** Thank you, Senator.

[The following was subsequently supplied for the record:]

June 24, 1985

RESPONSES OF NFL COMMISSIONER
PETE ROZELLE TO QUESTIONS
FROM SENATOR STROM THURMOND

1. Does the NFL have special needs which would justify its receiving different treatment under the antitrust laws than other professional sports leagues, as proposed in S. 172?

Answer

No. The NFL believes that, apart from baseball, any legislation should apply uniformly to all other major sports leagues. With the exception of baseball, which has a judicially-created antitrust exemption, all other sports leagues are subject to the same antitrust uncertainties that are presently faced by the NFL. In testimony before the Judiciary Committee and the Senate Commerce Committee, representatives of the National Basketball Association, the National Hockey League, and the Major Indoor Soccer League have supported legislation clarifying the application of the antitrust laws to professional sports leagues.

2. Before any action is taken in this area, the Committee needs to evaluate not only what the problem has been in the past, but what it may be in the future. Can you give us some idea of what the magnitude of this relocation problem may be in the near future? In particular, how many stadium leases are up for renewal?

Answer

The significance of this problem has been illustrated during the past 15 months. In the NFL, the Baltimore Colts relocated to Indianapolis last March. In December, the Philadelphia Eagles were prevented from moving to Phoenix only after the League went to court to challenge such a transfer until the Eagles submitted their proposal for League review. More recently, both the New Orleans Saints and St. Louis Cardinals have considered a move outside their home territories.

Nor is the problem limited to professional football. In basketball, the NBA is currently litigating the unilateral move of its San Diego Clippers franchise to Los Angeles. And the National Hockey League is in court defending its right to review the proposed transfer of its St. Louis Blues franchise to a city in western Canada.

Over half the teams in the NFL will have their leases expire in the next 15 years. In addition, in the absence of League controls, individual clubs may be willing and able to walk away from existing leases in favor of a more lucrative offer from another community.

The NFL therefore believes that this is not a short-term problem, either for football or other sports.

3. One witness has suggested that any antitrust exemption adopted with respect to team relocations should have a sunset provision -- that is, that it should be limited in time. What is your view on this? Would a sunset provision be appropriate with respect to a revenue-sharing exemption?

Answer

We are not aware of the rationale for a sunset provision in the present context. However, the NFL sees no need at this time for a sunset provision as to either franchise location or revenue-sharing, and we note that none of the bills presently pending in either House of Congress contains such a provision.

4. I have several questions about the revenue-sharing provisions in S. 298.

(a) First, what is the current law with respect to revenue-sharing by professional football teams? Have there been any adverse court decisions, as there have been in connection with team relocations? Have any actions been filed?

(b) Does professional football, as opposed to other sports, have special needs in this area?

(c) What impact would a revenue-sharing exemption have on negotiations with players? Conversely, how would players be affected by an inability on the part of the League to share revenues?

(d) Please describe the sources of revenue for your teams and what percent each constitutes of total revenue.

Answer

(a) To our knowledge, there are no reported court decisions directly ruling on revenue-sharing by sports leagues, although the Court of Appeals for the Third Circuit has stated that "Public Law 87-331 [enacted in 1961] establishes as a matter of law that the members may lawfully pool revenues from the sale of television rights." Mid-South Grizzlies v. National Football League, 720 F.2d 772, 781 (3rd Cir. 1983). To our knowledge, there are no currently pending cases that raise revenue sharing issues. The 1961 television statute, 15 U.S.C. § 1291 et seq., authorizes leagues to pool and sell their television rights, and witnesses testifying before the Judiciary Committee on sports legislation have stated that the 1961 statute authorizes the sharing of revenues from network television sales. (See, e.g., testimony of Mr. Garvey, Hearings on S. 2784 and S. 2821 (Aug. 16, 1982), at 119, 125.)

The NFL believes its revenue-sharing policies, as a division of jointly-derived receipts among the members of the league venture, do not raise any significant Sherman Act issue. The shared revenues are jointly produced by all League members in co-producing their "league" product through the joint league enterprise. For the NFL, revenue sharing is essential, among other reasons, to maintain the high quality of the League's product through League balance and to maintain League teams in relatively small markets -- avoiding the emergence of "have" and "have not" clubs.

Further, the immediate effect of revenue sharing would appear to be to make the member clubs and the League itself more competitive with other sports and entertainment. The League balance resulting from revenue sharing tends to make all clubs more viable, and the League as a whole more viable. Nonetheless, as the Justice Department has acknowledged with respect to team relocations, the courts can reach misguided interpretations of the antitrust laws in the sports league context. The proposed bills on revenue sharing would thus confirm the legality of revenue sharing arrangements to eliminate any possible uncertainties that may exist in this respect.

(b) The structure and financial operations of the various professional sports leagues are geared to their particular needs and circumstances. Thus, comparisons of the financial operating patterns of any two sports leagues will invariably lead to conclusions of uncertain validity, and efforts to generalize from one sport to the other will largely be unsuccessful.

Within that context, it should be recognized that there are aspects of NFL operations that differ in important ways from those of other professional sports. These relate, for example, to the number of games played, the number of players employed, the required levels of revenue needed to meet player salary and collectively bargained commitments, etc. Further, the NFL's commitment to free network television is such that there is a limited opportunity to earn revenues from local broadcasting arrangements, in contrast to clubs in other sports leagues, which make heavy use of local telecasts on non-network and cable television.

Whether other leagues wish to adopt revenue-sharing patterns similar to those of the NFL should be a decision for their own membership to resolve based on a consideration of their own financial and management needs and in a manner that makes such league decisions binding on the entire membership.

(c) Legislation confirming the legality of revenue sharing would not change or alter negotiations between club-employers and their player-employees or players unions. Each of the major bills pending expressly confirms this, and the Commerce Committee report on S. 259 states that the revenue sharing provision "does not apply to the sharing of expenses or costs among teams. Thus, this act does not affect, for instance, the legality or illegality of sharing the cost of an individual player's salary among the league's member clubs. Nor does this act affect the legality or illegality of a league-wide cap on member-club expenses." The report further states that "the Committee [does not] intend that the legislation will overturn any judicial ruling concerning the impermissibility or permissibility of any player selection or movement limitations including reserve or option clauses, player draft systems or rules which prohibit member clubs from tampering with the players of another member club." S. Rep. 99-69, 99th Cong., 1st Sess. 8, 11 (1985).

The NFL's structure, and particularly its revenue-sharing practices, have resulted in a 28-team league that is able to offer comparable employment opportunities to over fifteen hundred players. The salary, pension, and other benefits currently available to NFL players are dependent on the League's ability to maintain its current financial structure, including the guarantee that each club will have adequate revenues to operate its franchise.

The NFL's inability to share revenues would have a substantial and adverse effect on player interests. For example, an inability to share revenues would result in sharply increased disparities in the earnings of NFL clubs. This would not only threaten the athletic competitive balance within the League, diminishing the appeal of the League's entertainment product and the earning power of its clubs. It would also force the clubs at the lower end of the economic spectrum sharply to reduce the salaries and benefits that they would be able to offer their players.

(d) The principal source of revenues for each of the NFL teams is network television, which is equally shared among the clubs, and amounts to just under 60 percent of the typical club's annual revenues. The second largest source of revenue is net gate receipts, which are divided 60 percent to the home team and 40 percent to the visiting team. Those receipts approximated slightly less than 35 percent of club average revenues last season. The remaining sources of revenues are divided between League-generated receipts, such as those from joint film and licensing activities, and certain locally-generated amounts, such as preseason television, local radio, in-stadium concessions and parking, and the like. In 1984, the total for all of these amounts approximated 7 percent of League-wide receipts.

5. In the so-called "Boulder" bill, the 98th Congress addressed certain antitrust problems encountered by states and municipalities by exempting them from monetary damages. Injunctive relief remains for aggrieved parties. Is this a viable approach with respect to potential antitrust problems associated with team relocations and revenue-sharing?

Answer

A solution of this type would free leagues of the threat of treble damage penalties. However, it would do nothing to resolve the fundamental analytical difficulties in the team relocation area that are highlighted in the Department of Justice's June 12 testimony before the Committee. Thus, a "Boulder"-type bill would only be a partial solution to the problem. A bill containing some of the elements of "Boulder"-type legislation, permitting suits by the Attorney General and by competing leagues, has been introduced in the House as H.R. 956, and that version of a "Boulder" approach is viewed as constructive by the NFL.

6. S. 172 contains an exclusive list of criteria governing team moves. Is it possible to delineate all appropriate criteria in a statute, or should there be some provision for flexibility so that additional criteria can be considered in the future?

Answer

The NFL does not believe that a single set of fixed statutory criteria can realistically be applied. Decisions on franchise location are critical business judgments, and there must be room for leagues to exercise judgment. In evaluating proposed relocations, the NFL has in the past looked to a variety of factors, including those delineated in S. 172, but has not regarded any single factor or set of factors as dispositive. S. 172 is only one of a number of currently pending bills that attempts to delineate a set of criteria to be applied by leagues when evaluating questions of franchise location. We believe it is appropriate to delineate criteria only if they are intended not to be exclusive and inflexible, and only if the League is entitled to incorporate additional pertinent criteria when evaluating proposed moves, and to make location decisions on that basis.

Senator SPECTER. I would like to turn now to the commissioner of the U.S. Football League, Harry L. Usher, who comes to this position after being executive vice president and general manager of the Los Angeles Olympic Organizing Committee. Prior to that, he was a practicing attorney for some 16 years in Los Angeles.

Mr. Usher, we thank you for being here, welcome you, and look forward to your testimony.

STATEMENT OF HARRY L. USHER, COMMISSIONER, U.S. FOOTBALL LEAGUE, NEW YORK, NY

Mr. USHER. Thank you very much, Senator Specter. I, on behalf of the USFL, come at this problem slightly differently than the four proposals, two of which are before this committee and two of which are before the Senate Commerce Committee, because all of them address really just a portion of the problem; namely, the tip of the iceberg being the regulation of transfer of franchises.

What they do not address, in my opinion, is the root cause for the pressure on transfer of franchises itself, and that root cause is scarcity. The scarcity arises from the fact that the USFL or any league that attempts to be competitive with the National Football League is effectively barred from the essential network agreements that were testified to by Pete Rozelle here this morning.

The reason for that bar is that the NFL and the three networks that it has contracts with have effectively put up a barrier that has been permitted by the various exemptions to the antitrust laws granted by Congress over these years.

The first one of those exemptions is embodied in the 1961 Sports Broadcasting Act. And as I believe the Senator is very familiar, that act provided for the right to pool television rights in response to an action filed by the United States against the NFL in 1960 and 1961 before Judge Grim that held that it violated the antitrust laws.

During the hearings before the House Judiciary Committee, there was concern expressed as to what would happen if this exemption to the antitrust laws for pooling were granted by Congress if one of the leagues, either the NFL or the AFL, were to monopolize all three of the networks.

I would point to page 4 of the written statement which I have submitted that contains excerpts from this testimony, the entire statement, I hope, being incorporated into the record.

Questions were raised of Mr. Rozelle, and also Mr. Carothers, the lawyer for the NFL from the Covington & Burling firm:

> Mr. MALETZ. Now, if all the networks were tied up by one football league, by the National Football League, for example, would not the other league, the American Football League, possibly be at a major competitive disadvantage?
>
> Mr. ROZELLE. I should certainly think so.
>
> Mr. MALETZ. Now, to forestall against this possibility, do you believe that the bill should specifically prohibit a league from entering into a package contract with more than one network?
>
> Mr. CAROTHERS. The object of this legislation is to give us the right to do on a single network, and when we have to reverse our thinking to the degree that you would now require us to go on a single network, I cannot see how we could have any objection to a provision such as that.

Then later in the testimony, as Mr. Rozelle went on to advise the committee in 1961:

Mr. ROZELLE. If I might say, there is no intention on our part of using more than one network if this legislation is passed.

The House Judiciary Committee then reported out the bill and included in its report a statement which is contained on page 5 of my statement that I am submitting to this committee, which I will read, in part:

> Some concern has been expressed that the language of this section might be considered to give an absolute exemption from the antitrust laws for any kind of television arrangements entered into by a league, and particularly an arrangement which might involve several networks or might thus exclude a competing league from all television coverage. This is not the intent of H.R. 9096, which is designed to permit the sale of television rights by a league and its member clubs to a single network. The committee does not intend that an exemption to the antitrust laws should be made available to a league or its members where the intent or effect of a joint agreement is to exclude a competing league or its members from the sale of any of their television rights.

What has happened is that after the passage of that act, by amendment again to the Sports Broadcasting Act of 1966, the AFL and the NFL merger was approved, and following that in 1969, upon its effective date, all three networks came under contract to the NFL.

Senator SPECTER. Mr. Usher, do you think that there is a violation of the antitrust laws under the current arrangements where the NFL has arrangements with two networks?

Mr. USHER. Three networks. The NFL presently has arrangements with three networks. Is your question do I think if they only had two, would it be violative?

Senator SPECTER. Well, let us start with two and let us move to three.

Mr. USHER. Three, definitely. That is the subject matter of the USFL lawsuit against the NFL which is presently pending. I think the question may be more open with respect to two.

What effectively happened is when the merger took place, the NFL had a CBS pooled television agreement and the AFL by that time had been moved from ABC over to NBC and also had a pooled television agreement.

When the merger took place, the two television networks continued their practice of telecasting those respective games. Then ABC was under contract in 1969 and 1970 to the NFL, and that configuration has remained in effect for 15 years, effectively barring any competing league from competing with the NFL.

It is that competition, we submit, that really would alleviate much of the pressure for the regulation of transfer of franchises. As we point out in our statement, 9 of the 14 clubs are in non-NFL cities, and Senator DeConcini, I am sure, recognizes that Phoenix now has one of the USFL clubs.

If the USFL clubs are permitted on network television—and certainly you have had enough testimony this morning from Pete Rozelle as to the essentiality of a network television contract on a pooled basis and that that, by synergy and by programming, is 60 percent of the revenues of the NFL.

It is absolutely essential today, the way television is set up, that there be a pooled network television agreement in the fall to telecast professional football. We have under employment over 700 players and coaches. We employ many of the same concession workers, the ticket-takers, the people cleaning up the stadium. We provide economic impact, too, to these communities.

But without the ability to compete openly and freely by challenging the very configuration of three networks with a monopolist that Congress has permitted through the exemptions that have been used in a damaging fashion, we submit that a lot of the competition for the expansion, for the sharing, for the entire concept of professional football in the United States, will be damaged.

So what is being proposed is that either through the separate submission of an amendment to the Sports Act or by coupling an amendment to any of these four concepts that are coming out—the two before Senate Judiciary or the two before Senate Commerce—that as part of granting this additional antitrust exemption to professional football to control the transfer of franchises, the condition be imposed that no one league be on more than one television network.

That was agreed to in 1961 by Mr. Rozelle and by the attorney for the NFL, and it has been violated. It was violated in 1966, it was violated in 1969, and it has really acted as a bar to any kind of competitive football league occurring in the fall for 15 years.

And the effect of that 15 years is a tremendous building up of pressure by these teams which now either want to move or want to be retained, and the taxpayer ends up being the loser because the problem is one of scarcity. It is not one of control and movement of franchises. It is the scarcity occasioned by the locking in and the nonexpansion of the NFL itself occasioned by this monopolistic position. There is nothing forcing them to do it.

As Senator DeConcini correctly pointed out in questioning Mr. Rozelle, if you grant this additional exemption, what expansion is going to occur? Mr. Rozelle comments that maybe two teams after the world becomes safe and sound for democracy, or something, but it certainly is not going to happen right away.

The quid pro quo of two teams–we are talking about 14 teams in the USFL employing 700 players and coaches and employing a number of people that work in stadia around the country, having an economic impact in cities such as Jacksonville and Memphis and Birmingham and others that have tried to get in the NFL and besn barred from it by the nonexpansionist practices of the NFL.

Senator SPECTER. Commissioner Usher, what is the status of the antitrust litigation?

Mr. USHER. An action was filed in October against the NFL and shortly thereafter the NFL employed the law firm of Paul, Weiss, Rifkin in New York.

Senator SPECTER. Are the networks named as parties defendant?

Mr. USHER. No.

Senator SPECTER. Is the thrust of the lawsuit is that the antitrust laws are being violated by the arrangements with the networks?

Mr. USHER. There are really two aspects to the lawsuit. One attacks the very configuration of the NFL contracting with all three networks and effectively barring the commerce of a competing league.

The second is specific acts taken by the NFL which are predatory or anticompetitive that create damage to the USFL clubs.

Senator SPECTER. Are you currently trying to negotiate with the networks to have telecasting in the fall of 1986?

Mr. USHER. That is correct.

Senator SPECTER. How is that going?

Mr. USHER. Not well. The discussions that were held to date indicate the fact that this present configuration as of 1985-86 with the NFL makes it so that there is no additional interest in any kind of competitive league during that time frame.

There are also allegations in the action concerning whether there are additional tying arrangements between the television networks or any one of them and the NFL. But just looking at the configuration, without any additional agreements, they, in fact, effectively bar that form of commerce.

Senator SPECTER. Well, in the fall of 1986, do CBS and NBC continue to have arrangements to telecast the NFL?

Mr. USHER. All three networks do in the fall of 1986.

Senator SPECTER. Well, ABC has on "Monday Night Football."

Mr. USHER. And certain playoff games.

Senator SPECTER. But they have Sundays free to televise the USFL if they chose to do so, do they not?

Mr. USHER. Not effectively under this arrangement.

Senator SPECTER. Why not?

Mr. USHER. Because of the pressure that can be exerted by the NFL when these contracts are up in 1986.

Senator SPECTER. So you think ABC TV is not really free to negotiate with your league?

Mr. USHER. Not effectively, no.

Senator SPECTER. What do you think about Senate bill 172, which would establish standards for transfer or removals? I can understand that you would like to see some additions which would limit the NFL in terms of having their games covered on more than one network.

But if we are to address the single problem of the Raiders move or the Colts, et cetera, and possible Eagles move, do you think that there is some form of an interest in the fans to have a team stay in the city where the team is making money and has a decent stadium?

Mr. USHER. I think that there is an interest, a public interest, that needs consideration. I think once that has been abused by a team or a league that action should be taken. But I think it is very difficult, and perhaps even dangerous, to isolate on one part of a problem.

And the isolation and the additional granting of an exemption under any of these, including 172 or 298, would effectively enshrine the control that is exactly is the festering and the pressure today.

In other words, if that just sits on it for another 3 years or 5 years, however long it takes to perk up to the top of whatever procedure any of these proposals contemplate, that you have got to have no profits for three years or you have got to go through an arbitration board or you have got to go through a review panel—whatever it is, these same pressures are going to rise up again. You are just sitting on them.

So in 5 years, the pressure will build up again and then you will have the cities trying to lure away the teams or you will have the city mortgaging itself into the future trying to retain the team.

Senator **SPECTER**. Are you are opposed to any legislation which deals with franchise removal because it solves a problem and you would rather have problems present for an overall addressing of all the issues?

Mr. **USHER**. I think, looking at Judge Praegerson's ruling, you can come out with a set of rules which will comply with the rule of reason without the necessity of creating a Federal overlay on people's private business.

On the other hand, this has been created by exemptions given to the antitrust laws now and Congress cannot simply turn its back if its constituents are being injured by the monolithic power that any of these teams have.

Senator **SPECTER**. Well, if Congress cannot turn its back, what is wrong with a limited antitrust exemption to make it plain that certain standards for team franchise removals do not violate the antitrust laws?

Mr. **USHER**. I do not think there is anything wrong if it is coupled with, also, an analysis and enactment that that problem of the pressure will be alleviated and you will not be back here in 3 or 5 years when you have gone through the procedures erected to go through a request for a transfer of franchises.

Just locking in the existing NFL cities and granting that exemption is not going to do anything to alleviate the pressures that are going on. I think Congress has to address the bigger question that it has erected a system where one big monopolist is dealing with the three monopoly networks and they are locked together, barring the effective ability of any competing league to compete and enhance the benefit of those cities.

I am not sure whether Senator DeConcini really knows that the USFL is in Phoenix. I did not see any indication that he so thinks. There is a heck of a team in Phoenix, employing a lot of players, employing and leasing stadia, employing people that are working there, and generating now about 20,000 people a game and it is going up.

Now, that type of activity will generate an enthusiasm over a period of time for that city to recognize that club, the Outlaws, as its club.

Senator **SPECTER**. There is a report that the USFL team in Phoenix could not get a lease arrangement on a protracted basis because of the expectation that there will be an NFL team there. Is there any substance to that report?

Mr. **USHER**. There was substance to the report. I do not know exactly where it sits right now, but when the negotiations were being held for the Outlaws in connection with the stadium, there was a wave of people.

First, the Eagles were down there, and that put a crimp in their negotiations. Then that stopped and the Cardinals——

Senator **SPECTER**. Has the USFL team been able to get a contract on a protracted basis to play in the stadium?

Mr. **USHER**. I think they are on a 1-year contract. I would have to check that, Senator.

Senator SPECTER. Mr. Usher, we will make your full statement a part of the record.

[The prepared statement follows:]

TESTIMONY BEFORE
THE SENATE JUDICIARY COMMITTEE
OF
HARRY L. USHER
COMMISSIONER, UNITED STATES FOOTBALL LEAGUE
March 6, 1985

Mr. Chairman and Members of the Committee:

My name is Harry Usher, and I am the Commissioner of the United States Football League, a position I have held for just over a month. Prior to assuming this position, I served for five years as the Executive Vice President and General Manager of the Los Angeles Olympic Organizing Committee. Prior to that, I practiced law for sixteen years in Los Angeles.

The USFL has just commenced its third season as a major professional football league. The USFL consists of 14 member clubs, nine of which are located in non-NFL cities. Those cities include Oakland, Baltimore, Phoenix, Memphis and Jacksonville, each of which has applied for an expansion franchise in the NFL.

S.172 attempts to address a specific current problem facing professional football; namely, that the NFL teams, because of the NFL's policy against expansion, are able to extract major concessions from taxpayers in cities that want to keep their NFL teams where they are and in cities that are attempting to lure such teams to relocate. I submit to you that the particular problem this bill addresses is merely the manifestation of a much more serious underlying problem in professional football. Unless Congress acts to cure the underlying problem this proposed bill will not only fail to achieve its objective, but it will actually aggravate the root problem by granting the NFL additional power to control franchise moves.

The root problem in professional football is scarcity. For the past 15 years, the NFL has enjoyed a monopoly position in major league professional football that is in large part the result of prior piecemeal Congressional action which, with the benefit of hindsight, we can now see has had an effect directly contrary to what Congress intended. I would like to explain briefly how this root problem of scarcity arose and how it has come to pass that the taxpayers and cities are now facing this tremendous pressure to keep an NFL franchise or to lure one.

To understand how this scarcity problem arose, we have to look back to 1959, when the American Football League was being formed as a separate and distinct professional football league in competition with the NFL. At that time, and for many years prior to that, the NFL member clubs had sold television rights to their games on an individual rather than league-wide basis. In 1960, however, when the AFL entered into a league-wide network television contract with ABC, the NFL teams similarly decided to pool their television rights on a league-wide basis. In 1961, the NFL entered into a two-year contract with the CBS network which granted CBS the exclusive right to televise NFL games. In July 1961, however, in United States v. National Football League, 196 F. Supp. 445 (E.D. Pa. 1961), Judge Alan Grim held that the NFL's contract with CBS violated the antitrust laws.

As a direct result of Judge Grim's decision, Congress enacted the Sports Broadcasting Act of 1961, 15 U.S.C. §1291. That legislation, which was solicited by the NFL and its Commissioner, Mr. Rozelle, allowed member clubs of professional football, baseball, basketball and hockey leagues to pool their television rights without violating the antitrust laws. As was its intent, that legislation served two purposes. First, it freed the NFL from Judge Grim's prohibition by allowing the NFL, like the AFL and other professional sports leagues, to enter into a single network contract on behalf of all of its member clubs granting exclusive rights to NFL games. Second, it enhanced the ability of franchises located in smaller cities to compete with those in larger cities through the pooling and league-wide division of network television revenues.

At the time that the House Judiciary Committee considered that 1961 legislation, the Committee in its hearings explored the possible anti-competitive ramifications of the antitrust exemption provided for by the 1961 bill. Specifically, it explored the possibility that Congress, in allowing the NFL to pool the television rights of its member clubs, might thereby enable that league to enter into package television contracts with all three networks, thus precluding access to the networks by another competing league.

The 1961 Committee sought Commissioner Rozelle's view on that subject and I would like to quote one brief portion of the questions and answers addressed to Commissioner Rozelle and his attorney, Mr. Hamilton Carothers of Covington & Burling, by the Chief Counsel for that Committee, Herbert Maletz. This testimony is taken from page 35 of the August 28, 1961 hearing before the Antitrust Subcommittee of the House Judiciary Committee:

> Mr. Maletz: Now, if all the networks were tied up by one football league, by the National Football League, for example, would not the other league, the American Football League, possibly be at a major competitive disadvantage?
>
> Mr. Rozelle: I should certainly think so.
>
> Mr. Maletz: Now, to forestall against that possibility, do you believe that the bill should specifically prohibit a league from entering into a package contract with more than one network?
>
> Mr. Carothers: The objective of this legislation is to give us the right to do on a single network, and when we have to reverse our thinking to the degree that you would now require us to go on a single network, I cannot see how we could have any objection to a provision such as that.

As Mr. Rozelle went on to advise that Committee, and again I quote from the hearing testimony:

> Mr. Rozelle: If I might say, there is no intention on our part of using more than one network if this legislation is passed.

Whatever Mr. Rozelle intended, Congress in 1961 did not intend to provide the NFL with an antitrust exemption to the extent that the NFL entered into a package television contract with more than one network. We know this because the House Judiciary Committee's report, which followed the August

1961 hearing and which recommended the bill's passage, expressly says so. As the Committee report states:

> Some concern has been expressed that the language of this section might be considered to give an absolute exemption from the antitrust laws for any kind of television arrangements entered into by a league, and particularly an arrangement which might involve several networks and might thus exclude a competing league from all television coverage. This is not the intent of H.R. 9096 which is designed to permit the sale of television rights by a league and its member clubs to a single network. The committee does not intend that an exemption from the antitrust laws should be made available to a league or its members where the intent or effect of a joint agreement is to exclude a competing league or its members from the sale of any of their television rights.

Immediately following the passage of the 1961 legislation the situation was precisely as Congress intended. The NFL had one contract with CBS and its competing league, the AFL, had one contract, first with ABC and later exclusively with NBC. In 1966, however, Congress amended the Sports Broadcasting Act to exempt the merger of the AFL and the NFL from antitrust action, basing its approval on the fact that the merger would increase and not decrease the number of professional football franchises. One result of that merger was that, at a time when there was no other competing professional football league, the NFL obtained television contracts with two of the three networks.

Obviously overlooking his prior acknowledgement to Congress that the tying up of all three networks by one league would place any other league at a "major competitive disadvantage", in 1969 -- right after the AFL merger was consummated -- Commissioner Rozelle entered into the first of a series of contracts with the third network, ABC, for Monday night football. Mr. Rozelle did not go back to Congress for permission to do what he had said in 1961 he wouldn't do and, in 1969, there was no competing football league to complain to Congress or the courts about the NFL's success in tying up all three networks which Mr. Rozelle admitted would place another football league at a "major competitive disadvantage."

That sequence of events demonstrates how Congress, *despite* its expressed intention to the contrary, permitted the NFL to establish itself in a monopoly position with all three networks which has effectively precluded any other professional football league from fairly competing. By entering into contracts with all three networks, the NFL was able to create a closed shop in professional football and thereby control the supply of football franchises by inhibiting new leagues from forming. The NFL has enjoyed its monopoly for some 15 years now, during which time each NFL member club's annual television revenue has increased from close to $1.5 million in 1970 to $15 million in 1985.

During that same time period, from 1969-1985, the NFL has expanded only once, to add the Seattle and Tampa Bay franchises in 1974. The reason for the NFL's failure to expand is clear: fewer teams mean a bigger share per team of the monopolist's television pie. In 1985, each NFL team will receive about seven times the amount of television revenues that each USFL team will receive -- $15 million vs. $2 million.

By tying up all three networks, the NFL has also had every motivation to keep its closed shop as small as possible and to resist expansion, thereby restricting the supply of football franchises inside the NFL as well as outside the NFL. The NFL's current lock on the three networks is not only contrary to Congress' express intention, it has also made it impossible for a competitive football league with franchises in non-NFL cities to compete successfully against the NFL in major league professional football.

I respectfully suggest that the public interest deserves to have this bigger problem of monopoly power induced scarcity addressed by Congress. The source of the problem can be rectified by legislation limiting professional sports leagues (excluding baseball which has historically been exempt from the antitrust laws) to television contracts with no more than one network. While the USFL is in the process of seeking the introduction of separate legislation to that specific effect as an amendment to the Sports Broadcasting Act, I also propose to this Committee that the same provision be added as an amendment to Senator Specter's bill. This would ensure that Congress, in acting to cure the franchise relocation problem at hand, also acts to implement Congress' actual intent back in 1961. This legislation is necessary to enable the USFL as well as other future competitors to gain access to essential network television facilities.

The language of my proposed amendment is attached to my statement. Basically, it provides that the existing antitrust immunity for the pooling of television rights shall not apply to any league which has a package television contract with more than one network, and it defines what constitutes a network. I request that the Committee consider this provision as an amendment to the Specter bill.

It is no coincidence that the Justice Department also has recently recognized the importance of furthering competition in the broadcasting of professional football by approving an antitrust exemption for a USFL proposal to pool certain television rights at times previously reserved for college football. As the Justice Department stated in its January 8, 1985 opinion to the USFL, the USFL's proposal to telecast on Saturday, "at the present time and under present market conditions [is] reasonably necessary in order for the USFL to have a chance of surviving in competition with the NFL and thus providing additional competition in the market in which broadcast rights for professional football are sold, and other markets as well."

Congress cannot hope to stabilize existing franchises and bring new franchises to deserving communities by granting the NFL additional authority to act. Such legislation can only serve to bolster the NFL's monopolistic position and practices. Instead, Congress should attack the root of the franchise relocation problem in a way that will open up professional football and professional football franchises and recreate the competitive marketplace that Congress envisioned in its initial professional sports legislation. If Congress acts to permit the free enterprise system to operate, you will see an increase in competitive football in deserving communities. Fan support will be rewarded by team loyalty and the raids in the night like that witnessed in Baltimore will end.

99th Congress
1st Session

Proposed Amendment to S.172

SEC. _. The Sports Broadcasting Act (75 Stat. 732, 15 U.S.C. §§ 1291-1295) is amended by adding the following Section to be designated Section _:

"(a) Section 1 of this Act shall not apply to any joint agreement described in the first sentence of Section 1 of this Act of a professional football, basketball, or hockey league if that league has such a joint agreement or agreements with more than one television network.

(b) For purposes of this Section, a 'television network' means any person which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in ten or more States."

TELECASTING OF PROFESSIONAL SPORTS CONTESTS

HEARING

BEFORE THE

ANTITRUST SUBCOMMITTEE
(Subcommittee No. 5)

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 8757

A BILL TO AMEND THE ANTITRUST LAWS TO AUTHORIZE LEAGUES OF PROFESSIONAL FOOTBALL, BASEBALL, BASKETBALL, AND HOCKEY TEAMS TO ENTER INTO CERTAIN TELEVISION CONTRACTS, AND FOR OTHER PURPOSES

AUGUST 28, 1961

Serial No. 18

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
74702 O WASHINGTON : 1961

COMMITTEE ON THE JUDICIARY

EMANUEL CELLER, New York, *Chairman*

FRANCIS E. WALTER, Pennsylvania
THOMAS J. LANE, Massachusetts
MICHAEL A. FEIGHAN, Ohio
FRANK CHELF, Kentucky
EDWIN E. WILLIS, Louisiana
PETER W. RODINO, Jr., New Jersey
E. L. FORRESTER, Georgia
BYRON G. ROGERS, Colorado
HAROLD D. DONOHUE, Massachusetts
JACK BROOKS, Texas
WILLIAM M. TUCK, Virginia
ROBERT T. ASHMORE, South Carolina
JOHN DOWDY, Texas
LESTER HOLTZMAN, New York
BASIL L. WHITENER, North Carolina
ROLAND V. LIBONATI, Illinois
J. CARLTON LOSER, Tennessee
HERMAN TOLL, Pennsylvania
ROBERT W. KASTENMEIER, Wisconsin
M. BLAINE PETERSON, Utah

WILLIAM M. McCULLOCH, Ohio
WILLIAM E. MILLER, New York
RICHARD H. POFF, Virginia
WILLIAM C. CRAMER, Florida
ARCH A. MOORE, Jr., West Virginia
GEORGE MEADER, Michigan
JOHN V. LINDSAY, New York
WILLIAM T. CAHILL, New Jersey
JOHN H. RAY, New York
GARNER E. SHRIVER, Kansas
CLARK MacGREGOR, Minnesota
CHARLES McC. MATHIAS, Jr., Maryland
JAMES F. BATTIN, Montana
JAMES E. BROMWELL, Iowa

Bess E. Dick, *Staff Director*
William R. Foley, *General Counsel*
Walter M. Besterman, *Legislative Assistant*
William P. Shattuck, *Legislative Assistant*
Charles J. Zinn, *Law Revision Counsel*
Cyril F. Brickfield, *Counsel*
William H. Crabtree, *Associate Counsel*

Antitrust Subcommittee

Subcommittee No. 5

EMANUEL CELLER, New York, *Chairman*

PETER W. RODINO, Jr., New Jersey
BYRON G. ROGERS, Colorado
LESTER HOLTZMAN, New York
HAROLD D. DONOHUE, Massachusetts
HERMAN TOLL, Pennsylvania

WILLIAM M. McCULLOCH, Ohio
WILLIAM E. MILLER, New York
GEORGE MEADER, Michigan

Herbert N. Maletz, *Chief Counsel*
Julian H. Singman, *Associate Chief Counsel*
Herbert Fuchs, *Assistant Counsel*

was our further conclusion that at the expiration of that single network contract, and after fulfilling the legal obligation to CBS, our intent was to go into open bidding because obviously it would be to our advantage.

We did go into open bidding for our world championship game, which is our showcase, our plum. It, of course, is our version of the world's series. Although we had signed a single network contract with CBS, we did not give to CBS our payoff game. We submitted our world championship game to open bidding, and NBC came up with the top bid, and the rights through this open bidding went from $200,000 a year to $615,000 a year.

We are well aware of the advantages of competitive bidding. We are anxious to go into it at such time as we are legally free.

Mr. MALETZ. May I ask you this: Do you believe that the bill should contain a requirement that television rights must be offered for sale on a competitive bid basis?

Mr. ROZELLE. I do not, because that would destroy the effect of the bill for us. We are not yet in a position to go into open bidding until these individual contracts expire with CBS.

Mr. MALETZ. Do you think that the bill might contain a provision that, beginning in 1963, there should be a competitive bid requirement?

Mr. ROZELLE. First, at the conclusion of the 1961 season, CBS will hold two 1-year first refusals with 10 of our clubs, so that they would have the opportunity of exercising those on any of the 10 clubs they wish, meaning the best offer for 1962 and for 1963.

Therefore, for those 2 years we are obligated to CBS, if we are going to have a single network contract. I do not believe that such a provision is necessary. Obviously, it is in our interest to have open bidding because we would derive greater income from it.

We have found, as I pointed out, in our championship game, by having open bidding, we tripled the value of our game.

Mr. MALETZ. The reason I asked the question was that I understand that segments of the broadcasting industry suggest a competitive bid requirement.

Mr. ROZELLE. As I say, a competitive bid requirement would nullify the effect of the bill, because we would be unable to enter into it for 1962 and 1963.

Mr. MCCULLOCH. Mr. Chairman, I would like to pursue that question a little further.

Again, if I may use the language that counsel has used, after all legal commitments have been made and conformed to or executed by the individual clubs, do you have objection to competitive bidding?

Mr. ROZELLE. We have no objection. We have demonstrated o[illegible] intent, as I explained, in the past.

Mr. MCCULLOCH. Let me ask you this question: Do you have any objection to writing into the law provisions which, after 1962 or 1963, when your legal commitments have been completed, will require competitive bidding?

Mr. ROZELLE. May I explore the ramifications of such a clause?

Mr. MCCULLOCH. Certainly.

Mr. ROZELLE. We would see no objection to that. However, we would not wish it specified as to the open bidding every, say, 1 year or 2 years or 3 years. We do not know what changing conditions will bring, and whether we would wish to go into a 2-year contract; or perhaps we are concerned about the future of television, we might want to go for a 5-year contract. But it is our intention to have open bidding so we would have no objection to that.

Mr. McCulloch. Mr. Chairman, I am very glad to hear that, because that question, when this bill comes to the floor of the House, I am sure will be pressed for a definite and unequivocal answer.

Mr. Rozelle. That is my answer: That as soon as we are legally free, there would certainly be no objection to that provision, if it is necessary.

Mr. Maletz. Mr. Chairman?

Mr. Rozelle, under the bill one football league could enter into package TV contracts with all three networks whereby each network would carry games of certain member clubs; is that not right?

Mr. Rozelle. Would you repeat that, please?

Mr. Maletz. Under the bill one football league could enter into TV package contracts with all three networks whereby each network could carry games of certain member clubs; is that not right?

Mr. Rozelle. Except that would not be a package contract. That would be doing basically what we are doing now, using more than one network, which we are attempting to get away from.

Mr. Maletz. Under the bill, the National Football League could tie up all the three networks; could it not?

Mr. Rozelle. We could do it today. I assume we could under the bill.

Mr. Maletz. Now, if all the networks were tied up by one football league, by the National Football League, for example, would not the other league, the American Football League, possibly be at a major competitive disadvantage?

Mr. Rozelle. I should certainly think so.

Mr. Maletz. Now, to forestall against this possibility, do you believe that the bill should specifically prohibit a league from entering into a package contract with more than one network?

Mr. Carothers. The objective of this legislation is to give us the right to go on a single network, and when we have to reverse our thinking to the degree that you now would require us to go on a single network, I cannot see how we could have any objection to a provision such as that.

Mr. Maletz. I believe that this is one objection that might conceivably be raised. The suggestion will be made a little later on in the testimony.

Mr. Rozelle. If I might say, there is no intention on our part of using more than one network, if this legislation is passed. That is just what we are attempting to get away from and have been for 18 months.

Mr. Maletz. Yes.

Mr. Rozelle. Now, we would have the right to utilize three networks, if we so chose. If the individual clubs could negotiate contracts with all three, there would be nothing to prevent us from doing that.

However, I do not feel that such a clause is necessary, and perhaps 20 years from now the television picture will change. The single network may no longer be desirable, and it may become much better for the public and the league to use more than one network.

87TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 1178

TELECASTING OF PROFESSIONAL SPORTS CONTESTS

SEPTEMBER 18, 1961.—Referred to the House Calendar and ordered to be printed

Mr. TOLL, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 9096]

The Committee on the Judiciary, to whom was referred the bill (H.R. 9096) to amend the antitrust laws to authorize leagues of professional football, baseball, basketball, and hockey teams to enter into certain television contracts, and for other purposes, having considered the same, report favorably thereon with amendment and recommend that the bill do pass.

The amendment is as follows:

On page 2 strike the language beginning on line 11 through line 20 and insert in lieu thereof the following:

> SEC. 3. Section 1 of this Act shall not apply to any joint agreement described in section 1 of this Act which permits the telecasting of all or a substantial part of any professional football game on any Friday after 6 o'clock postmeridian or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December in any year from any telecasting station located within seventy-five miles of the game site of any intercollegiate football contest scheduled to be played on such a date if—

PURPOSE OF AMENDMENT

The amendment is designed to provide greater protection than contained in the original bill for in-person attendance at college football contests. This is accomplished by extending the times and dates during which network telecasting of professional football games sanctioned by the antitrust exemption may not interfere with intercollegiate football games. The amendment provides that the antitrust exemption authorized by section 1 of the bill shall not apply to a joint agreement which permits the telecasting of all or a substantial part of any professional football game on any Friday evening after 6 p.m. or on any Saturday, during the period beginning on the second Friday in September and ending on the second Saturday in December within 75 miles of an intercollegiate football game scheduled to be played on that Friday evening or Saturday.

PURPOSE OF THE BILL

The purpose of H.R. 9096 is to enable the member clubs of a professional football, baseball, basketball, or hockey league to pool their separate rights in the sponsored telecasting of their games and to permit the league to sell the resulting package of pooled rights to a purchaser, such as a television network, without violating the antitrust laws. A further purpose is to prevent such package contracts from being used to impair college football gate receipts through network telecasts of professional football contests at times when college games are normally played.

REASONS FOR THE BILL

H.R. 9096 is needed to overrule the effect of a decision of the U.S. District Court for the Eastern District of Pennsylvania, issued July 20, 1961, in the case of *United States v. National Football League*. In that decision, Judge Grim ruled that a 2-year contract between the National Football League and the Columbia Broadcasting System granting CBS the exclusive right to televise league games is prohibited by the final judgment entered in the same case (116 F. Supp. 319) in 1953, and by the antitrust laws. The 1953 judgment enjoined the league and its member clubs from contracting to restrict the areas within which telecasts of league games might be made. A sole proviso permitted contracts to prohibit the telecasting of any game within the home territory of a member club on a day when that club was playing a game within its said home territory. The 1961 decision was based on the fact that by transferring their rights to the network the individual clubs unlawfully restricted themselves from determining the areas within which telecasts of games might be made.

The practical result of this decision is that the National Football League cannot enter into an agreement to sell the pooled television rights of its member clubs. Meanwhile, the American Football League, a competing professional football organization, operated under a package contract with a network during 1960 and has renewed its contract for the 1961 season. Other professional sports organizations, such as the National Basketball Association, have had the same type of television arrangements for many years, and the National Hockey League at one time used similar arrangements. In consequence, an apparent inequity exists in that the American Football League and other professional sports leagues continue to employ package television contracts, while the National Football League is under court order not to do so.

At hearings before the Antitrust Subcommittee on H.R. 8757, a bill having objectives similar to those of H.R. 9096, proponents of this legislation stated that a league needs the power to make "package" sales of the television rights of its member clubs to assure the weaker clubs of the league continuing television income and television cover-ago on a basis of substantial equality with the stronger clubs. Such income and coverage, they state, often mark the difference between profitable and losing operations. If the league is unable to exercise some control over the telecasting of league games, it is estimated that only a limited number of teams in the National Football League will have access to television broadcasting facilities in 1962 when present commitments expire. The result anticipated by the commissioner of the National Football League is that viewers in such communities as Green Bay, Minneapolis-St. Paul, Dallas, St. Louis, Detroit, and even such cities as San Francisco and Philadelphia may be unable to see the road games of their home team on television. This is based on the prediction that the television networks will abandon their long-time policy of televising the away-from-home games of each team back to the team's home territory unless a package sale can be negotiated. Such expected action would deprive many clubs of all access to television facilities and television income. As one witness put it, if the 14 teams of the National Football League and the 8 teams of the American Football League are required to act separately in the sale of their television rights, only a handful of these teams will hereafter be able to secure coverage on the limited network facilities now available.

In similar vein, the commissioner of the American Football League testified that television revenues are such a significant part of the overall financial success of a professional football team that it is necessary to prevent too great disparity in the television income of the various clubs. This, the witness observed, requires the pooling of revenues and a package contract. It was further stated that each individual club needs broad exposure on television, both for prestige among home territory viewers with its reflection in home attendance and for drawing power in attracting talent.

It is clear that under Judge Grim's recent ruling the members of a professional sports league cannot lawfully act in concert to assure member clubs with weak teams or limited home territory television markets an adequate amount of television income and of television coverage for games played away from home, on a basis of substantial equality with the stronger clubs. Yet should these weaker teams be allowed to founder, there is danger that the structure of the league would become impaired and its continued operation imperiled.

The committee believes that the public interest in viewing professional league sports warrants some accommodation of antitrust principles in order to avoid these consequences. H.R. 9096 achieves this purpose with minimal sacrifice of antitrust principles by exempting joint agreements under which a league sells or transfers pooled television rights of its member clubs to a purchaser.

Amendment of H.R. 8757 was proposed by the National Collegiate Athletic Association to prevent professional football telecasts into areas where colleges were playing games on that day. Spokesmen for the NCAA assert that the colleges are nonprofit educational institutions whose athletic programs form the backbone of the Nation's physical fitness and physical preparedness. They state that member colleges of the NCAA spend in excess of $81 million annually in providing intercollegiate, intramural, and recreational activities for more than 1,098,000 students. They also state that a principal source of support for these programs is gate receipts from intercollegiate athletic events, mostly from football and to the extent that gate receipts are insufficient to maintain these programs, institutional funds must be employed or the programs themselves reduced.

These spokesmen urge that reasonable devices to protect the colleges' sources of income and their athletic programs are in the public interest. They are convinced that uncontrolled televising of professional football games can be ruinous of "in-person" attendance at college games. It is the position of the collegiate group that professional football should not be granted exemption from the antitrust laws for package television contracts at the possible expense of intercollegiate football games.

The committee believes that it is desirable to limit the proposed antitrust exemption so that broadcasts of professional football games shall not impair college football gate receipts. Both professional football leagues presently play most of their games on Sunday during the regular college season, but also play a few Saturday and Friday night games made necessary by scheduling and stadium problems. Although witnesses representing both professional football leagues have assured this committee of their intention to continue their present Sunday scheduling practices, the committee believes that a legislative exemption of professional football from the antitrust laws should be specifically conditioned so that college football, upon which substantial educational programs depend for revenue, is not unduly prejudiced. Section 3 of H.R. 9096 effectuates this objective.

PROVISIONS OF THE BILL

Section 1 of H.R. 9096 provides that the antitrust laws shall not apply to any joint agreement by or among persons engaging in the organized professional team sports of football, baseball, basketball, or hockey by which a league sells or transfers the rights of its member clubs in the sponsored telecasting of their games. The sole effect of section 1 is to remove a league's package sales of the television rights of its members from the antitrust laws.

Some concern has been expressed that the language of this section might be considered to give an absolute exemption from the antitrust laws for any kind of television arrangements entered into by a league, and particularly an arrangement which might involve several networks and might thus exclude a competing league from all television coverage. This is not the intent of H.R. 9096 which is designed to permit the sale of television rights by a league and its member clubs to a single network. The committee does not intend that an exemption from the antitrust laws should be made available to a league or its members where the intent or effect of a joint agreement is to exclude a competing league or its members from the sale of any of their television rights.

The committee considered a proposal to limit the operation of section 1 of H.R. 9096 to joint agreements consummated through competitive bidding, but was persuaded that existing commitments of some professional sports leagues and their members make such a limitation impracticable. However, the committee expects the professional sports leagues which will benefit from enactment of H.R. 9096 to institute provisions for competitive bidding on the part of networks and other potential purchasers of television rights when the expiration of existing commitments permits.

The exemption provided by section 1 of H.R. 9096 applies to the sale or transfer of rights in the sponsored telecasting of games. The bill does not apply to closed circuit or subscription television.

Section 2 of H.R. 9096 is a limitation upon the scope of section 1. It states that the antitrust exemption provided by section 1 shall not apply to any joint agreement which prohibits the person to whom league television rights are sold or transferred from televising any game within any area except the home territory of a member club on a day when that club is playing a home game. The term "home territory" is not susceptible of a single definition that will be suitable for all professional football, baseball, basketball, and hockey leagues. By "home territory" the committee means such home territory as is recognized by a particular league's bylaws or custom and usage.

This section is designed to deny the antitrust exemption with respect to joint agreements transferring league television rights which prescribe a blackout of any territory, except in the situation in which Judge Grim recognized such blackout as reasonable, namely, in the home territory of a member club on a day when that club is playing a game at home.

The Department of Justice opposes the enactment of H.R. 8757, which did not contain this limitation, because it believes that such legislation would carve out a broad exemption to the antitrust laws without providing adequate safeguards. However, the statement submitted by the Department of Justice also expressed the opinion that H.R. 8757 goes beyond the intent to permit a package television contract and adds that—

> * * * if the committee believes that a bill along these lines would be in the public interest, we strongly recommend that a proviso be added at the end of section 1 to read substantially as follows: "*Provided*, That neither such joint agreement nor any other league arrangement forbids or limits the televising of any game into any area except the community in which a member of the league is scheduled to play a home game at the same time."

Section 2 of H.R. 9096 adopts the policy of this proposed proviso.

Section 3 of H.R. 9096 is a further limitation upon the scope of section 1, designed to protect college football from undue injury by professional football telecasts. It provides that the antitrust exemption authorized by section 1 shall not apply to a joint agreement which permits the telecasting of all or a substantial part of any professional football game on any Friday after 6 p.m., local station time or on any Saturday during the period beginning the second Friday in September and ending the second Saturday in December within 75 miles of an intercollegiate football game scheduled to be played on that Friday evening or Saturday. The term "telecasting" as used in this section covers both live and delayed telecasts of professional football games. The protection afforded by section 3 to college football games applies only where both participating institutions are institutions of higher learning with full-fledged degree programs and only if the college game and the game site were announced prior to March 1 by publication in a daily newspaper of general publication.

Section 4 of H.R. 9096 makes clear that the bill would not affect or change the applicability of the antitrust laws to any conduct or agreement other than the agreements to which section 1 applies. In other words, the bill would sanction league package sales of television rights and nothing more. It would not affect the legality of any league arrangement other than a joint agreement effectuating such a sale, and it would not affect the legality of actions of the person to whom a package sale is made, other than such purchase.

Section 5 of H.R. 9096 defines "person" as any individual, partnership, corporation, or unincorporated association or any combination or association thereof.

Section 6 of H.R. 9096 is a savings clause for any existing cause of action.

CHANGES IN EXISTING LAW

Inasmuch as this bill is new legislation, the provisions of clause 3 of rule XIII of the House of Representatives are not applicable.

* * *

Senator SPECTER. That pretty much covers the questions on my mind. If you have anything to add, we would be pleased to hear it.

Mr. USHER. No. I think I just wish to point out that in the statement it notes that the Justice Department, in January 1985, gave a review letter to the USFL which said you can go ahead and telecast on Saturday, even though that previously was barred under the exemption to the antitrust laws.

The reason for that was to recognize the anticompetitive effect that this monolithic setup between the networks and the NFL is causing right now. If we are allowed to compete freely and openly and the chains and channels of commerce are open to us, I will assure the Senators and everyone listening that if we can be, in the fall, on network television, those cities, because of the competitive aspects of our teams, will quickly identify with it and the impetus to lure NFL teams away from the present cities will go away and this pressure will calm down enormously.

I would suggest that solving the problem of scarcity by looking at 14 cities of the USFL, nine of which are in non-NFL cities, will solve this problem and the pressure will subside. Thank you, Senator.

Senator SPECTER. Thank you very much, Commissioner Usher.

I would like to turn now to Mr. Gilbert Stein, vice president and general counsel of the National Hockey League. Mr. Stein testified before this committee when we considered legislation in 1982. He has a very distinguished career in public service and the private practice of law and as a key official of the National Hockey League, and is a close personal friend of mine, having served as deputy district attorney with me when I was district attorney of Philadelphia.

I have had extensive experience with his legal prowess and I warmly welcome him here today. Thank you for joining us, Mr. Stein.

STATEMENT OF GILBERT STEIN, VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL HOCKEY LEAGUE, NEW YORK, NY

Mr. STEIN. Thank you, Senator. You mentioned my previous appearance before this committee with regard to Senator DeConcini's prior bill and with regard to your prior bill.

I recall that at that time I had a discourse with Senator Biden over whether or not it was really in the public interest to be concerned about keeping a team in its community. I would hope by the apparent generation of interest in the Congress today as opposed to 2½ years ago that more Congressmen and Senators are recognizing, hopefully, the public interest that you and Senator DeConcini touched on at that time, and which I supported then on behalf of our league and continue to support.

When I testified back in 1982, I indicated that I was talking theoretically about the problems that could be caused by franchise owners deciding to just go anywhere they wished without the approval of the league.

Shortly thereafter, we underwent a bit of a nightmare ourselves. I would like to share very briefly the practical concerns that face a league and league owners when that kind of a decision is presented to them.

The St. Louis Blues franchise—St. Louis is one of the bellwether cities in the National Hockey League, has been one of our stronger franchises over its existence since 1967. The St. Louis Blues franchise was owned by the Ralston Purina Co., and in 1983 the Ralston Purina Co. suddenly presented us as a fait accomplice with the fact that it had decided, without being concerned about the league or about the city of St. Louis or the citizens of St. Louis, to disenfranchise the citizens of St. Louis with regard to their hockey club.

They did it to make a fast buck; they did it because they found a promoter in Saskatoon, Saskatchewan, who was willing to get people to come up and beg and borrow to the extent of their limitations some $12 million to pay Ralston Purina, leaving them with not a single cent of invested capital in the proposed new franchise to be conducted in Saskatoon, leaving them without any visible assets to supply working capital.

The promoter himself submitted his financial statement to the league when we sought to find out what kind of financial responsibility we were dealing with, and his primary asset, as stated by him, was the face value of a term life insurance policy on his life.

Ralston Purina Co. had no concern for the citizens of St. Louis. They were not concerned, certainly, about the National Hockey League. There was no building in Saskatoon where this team could play. Saskatoon is a city of 160,000 population.

Senator SPECTER. How did the buyer afford the purchase?

Mr. STEIN. They found a local businessman who had some real estate holdings and got him convinced, out of enthusiasm to have a National Hockey League franchise in his hometown and in his home province—got him convinced to lay his entire fortune on the line. That is how the money was raised.

Now, initially, they came up $5 million short of the $12 million Ralston Purina wanted for the franchise, and these people that were going to supposedly operate this franchise asked Ralston

Purina if they could owe them the $5 million, which they would pay later, and Ralston Purina said no. They were not creditworthy people; they had already stretched themselves to the limit.

So they found an additional investor in that community just to come up with enough money to pay Ralston Purina. They were undertaking over $50 million in debt because they were going to build a building as well, with not one penny of invested capital.

Their hope of success was conditioned upon a public offering they were going to make to the citizens of Saskatchewan to raise, depending on which of two figures they submitted, either $45 million or $60 million.

Senator SPECTER. What has happened to the transaction, Mr. Stein?

Mr. STEIN. Well, what happened was the deal was so ludicrous and it was so unconscionable from the point of view of the No. 1 consideration—this was one of our bellwether franchises in St. Louis. We were concerned. We met with the mayor of St. Louis. Everyone in the St. Louis community was concerned.

We felt that hockey was certainly viable in St. Louis. Ralston Purina just said they were going to go ahead and do it, so what they presented us with was the threat that they were going to sue us if we did not approve the transfer. They were telling us that we had to approve a transfer which would have been a debacle.

They conceivably might not even have had enough money to meet the first payroll and start training camp for the season, without a building to play in. And if we did not approve that, we were going to be sued by Ralston Purina.

Senator SPECTER. What happened?

Mr. STEIN. We did not approve it and we were sued by Ralston Purina. Now, we do not feel we are going to lose the lawsuit, Senator.

Senator SPECTER. Has the team remained in St. Louis?

Mr. STEIN. The team has remained in St. Louis and has had 2 successful years in St. Louis since we kept them there, under new ownership.

Senator SPECTER. Did you get an injunction to stop the sale? You were sued by them?

Mr. STEIN. They sued us because we did not give them the approval they wanted, the green light to just make this deal and sell the franchise. One of the conditions of their sale to the Saskatoon group was they needed National Hockey League approval.

Senator SPECTER. So the team stays in St. Louis. They have sued you, and where does that litigation stand?

Mr. STEIN. We are going to trial in June before a jury in St. Louis, and just as the Al Davis case, so-called, has convinced a lot of nonlegal scholars who read newspapers for their understanding of the court opinions—just as it convinced a lot of people that the Davis case meant that franchises may now go willy-nilly wherever they want, probably after we defeat Ralston Purina and after the jury returns a judgment for punitive damages against Ralston Purina, probably the word around will be that no one is allowed to move a franchise.

But the reality under the law, Senator—the reality is the intimidation upon the owners is that in order to win the case, it will cost us millions and millions of dollars, and there we're going to have to have an appeal. No matter which side wins, it is going to be appealed.

So the intimidation that an owner faces who is trying to vote as a responsible member of a board of governors of a league is if we just approve this transfer, we are not going to have to face millions of dollars of litigation costs to defend our position, whereas if we vote for what we believe is in the best interest of the community where we have our ties and in the best interests of the stability of this league to reject and not approve this proposed move, then we are going to have to pay millions of dollars in litigation fees in order to defend our position.

Senator SPECTER. What are the National Hockey League standards for franchise moves?

Mr. STEIN. We have certain standards which, if the Senator would permit me, I would like to defer making any statement on because it happens to be one of the issues in the litigation. And I would prefer not to be in a position where something that I say is going to be utilized by Ralston Purina counsel as hopefully trying to score one point or another for their position.

Senator SPECTER. If S. 172 were to apply to the National Hockey League, would it be helpful and just to the situation which your league is confronted with in St. Louis?

Mr. STEIN. Well, S. 172, I suggest, Senator, has—I see more problems in S. 172 from the point of view of achieving the desired objective. I do not think it would hurt our litigation.

Senator SPECTER. Counselor, how would you structure legislation to provide an antitrust exemption on a limited basis to have appropriate and just limitations on franchise removals, a question which I have posed to you with some frequency over the past 2½ years?

Mr. STEIN. Yes, sir. Well, I would keep it simple and pure. When I hear the word "pure," I think of the fact that I really would like to refer to our friends in St. Louis as the Ralston Purina Co. because there is certainly nothing pure about that company.

Senator SPECTER. I think that statement, Mr. Stein, is privileged under the applicable defamation laws once said in a Senate hearing.

Mr. STEIN. Thank you, Senator.

Senator DeConcini's bill, I think, addresses the issue, and the issue really is the public interest is served by discouraging moves. So if you allow a league the freedom and the latitude to protect that public interest because it is analogous to the league's interest of keeping the team where it is, I do not really think you need more.

Senator SPECTER. It would be all right for the hockey league, but how about the football league?

Mr. STEIN. Well, I would be glad to speak for football, but I do not think that Mr. Rozelle would appreciate it. I think I would say things that he would approve of, but I think he should speak for his own league.

With regard to the bill, the sports business, Senator, is a business of peaks and valleys, and many times the economic fortunes of your team are tied inextricably to the fortune of the team on the playing field or, in our sport, on the ice, and that tends to go up and down depending on the quality of players you have, the quality of coaching you have, the quality of scouts that you have that generates your future players, et cetera—your development teams.

As you know, in hockey we spend a lot of money developing players. They do not just come out of college as they do in football and basketball, so that when we seek an owner in hockey, we want someone who is from the local community and who has the financial stamina to withstand the bad years as well as enjoy the good years.

So an arbitrary test of 3 unprofitable years, I submit, in all due respect to the Senator and bill 172, would be adverse to the objective that you are seeking, and that is to keep the stability.

It would not be difficult for certain teams to show 3 bad years and then want to get out. I do not think that is an adequate test.

Senator SPECTER. Mr. Stein, I would like you to give me, if you are willing to, suggestions on what the league would want to put into effect as standards of its own. I do not think the Congress is going to be prepared to give a generalized antitrust exemption. It is going to be hard to get any action through the Congress which limits the antitrust laws.

What I am struggling with is to find some definition which is realistic and would be acceptable to the league and would protect the kinds of values which you have in mind. If you had an antitrust exemption generally, you would then have to sit down and figure out what were the factors which would justify a franchise move and you would start to particularize them.

What I would like to see done is to find reasonable standards to limit franchise moves and tailor the legislation specifically to that so that there is no question as to how far the legislation goes.

Mr. STEIN. You do understand that to take that step assumes that it is necessary when a league sells a franchise to someone to operate in a certain city—you assume that it is necessary that as part of that contractual arrangement, we say we are also giving you an exit visa.

You see, in the National Hockey League, as part of an understanding with a team when a team signs on and the owner accepts a franchise, they are looking at the fact that in the National Hockey League there is no power to move; there is no authority.

Senator SPECTER. They cannot move unless the league gives them permission?

Mr. STEIN. No, no, it does not say that. Our constitution says——

Senator SPECTER. There is no permission to move?

Mr. STEIN. No. When you obtain a franchise in the National Hockey League, you know as the terms going in that you are obtaining it for the city of Philadelphia or the city of St. Louis.

Senator SPECTER. So you cannot move?

Mr. STEIN. And the constitution says that the franchise cannot be moved. Now, if you do not want to buy a franchise under those terms, you do not buy a franchise. And if you do, then where do you get the right to decide that you are just going to find some bidder in Saskatoon and move the franchise?

Senator SPECTER. Is it conceivable that that constitutional provision is unconstitutional under some other constitution? Your league constitution is not the dominant constitution in the land, Mr. Stein.

Mr. **Stein**. Anything is conceivable, Senator. We have addressed in the past franchises who were in extraordinary situations where our constitution was amended to permit them to move.

Senator **Specter**. How many States must ratify to have your constitution amended?

Mr. **Stein**. Various terms require various votes. Certain things require unanimous votes; some require a three-quarters vote.

Senator **Specter**. Well, Mr. Stein, you may prevail, perhaps as a testimonial to your own legal skills, but you might not prevail. Even with the greatest of legal skills, your constitution may be violative of the antitrust laws.

Mr. **Stein**. Without passing judgment on our constitution, we certainly would have no objection, and would be in favor of a limited antitrust exemption based upon reasonable standards.

Senator **Specter**. Well, let me not pose it for the hockey league, but let me ask you if you are willing to give some thought to an extracurricular subject, and that is franchise moves for the football league.

Mr. **Stein**. You mean at this moment or something I might submit to you subsequently?

Senator **Specter**. Sometime in the future. This hearing has gone very long; so long that I have lost all my colleagues.

Mr. **Stein**. I would certainly be happy to.

Senator **Specter**. I would certainly appreciate it if you would, Mr. Stein, because you have a tremendous reservoir of experience in this field. I do not know anybody who is a better lawyer and experienced in this field than you.

Mr. **Stein**. Thank you, sir. I appreciate it.

Senator **Specter**. I would appreciate your help on it. Of course, for the record, you and I have talked periodically over the course of the past 3 years about this subject, and I know you are very busy and have a great many commitments.

Mr. **Stein**. I had hoped between the time you introduced your last bill and the present to have gotten to you with some very structured and sound theoretical approaches and practical approaches to the problem and the objectives that you seek. Unfortunately, the litigation in St. Louis has taken so much of my time that I have been unable to address that.

Senator **Specter**. I can understand that. Do you plan to participate in the trial?

Mr. **Stein**. Yes, indeed.

Senator **Specter**. Do you plan to try it?

Mr. **Stein**. No. Mr. Tagliabue's firm, but a different team in that firm, is representing us, a team that has never lost any litigation for us and has won every one we have had.

Senator **Specter**. Very good, Mr. Stein, as usual. Thank you very much for coming.

Mr. **Stein**. Thank you, Senator.

Senator **Specter**. We are going to have to move you up on the agenda next time ahead of Mr. Rozelle to attract more of my colleagues' attention, but I will share your thoughts with them and I would appreciate any response that you could give us.

I would like now to turn to Commissioner Earl Foreman of the Major Indoor Soccer League. Mr. Foreman has an extensive background in professional sports, having been an owner of the Philadelphia Eagles of the NFL and the Baltimore Bullets of the National Basketball Association and the Virginia Squires of the American Basketball Association. He was an owner of the Washington Whips outdoor soccer team, which was a member of the United Soccer League, predecessor of the North American Soccer League.

He has been coowner of the Spectrum and is a fellow Pennsylvanian, a resident of the Philadelphia area. I welcome you here, Commissioner Foreman. Thank you for waiting and we look forward to your testimony.

Your full statement will be made a part of the record and we would be pleased to have you handle it by referring to it as you choose.

STATEMENT OF EARL FOREMAN, COMMISSIONER, MAJOR INDOOR SOCCER LEAGUE, BALA-CYNWYD, PA

Mr. Foreman. I shall do so, Senator. I would just like to reference some of the statements I have made in here briefly.

Senator Specter. Fine.

Mr. Foreman. One, I note that although your bill does not provide for the inclusion of sports other than football, you did state in your remarks on January 3 that it is your thought that Congress should explore the possibility of extending such proposed legislation to cover all professional sports.

I would say that most all of the problems we have heard discussed this morning are not presently applicable to my league. However, I do feel that we are really a microcosm of sports in the country. Those problems that relate to football, to hockey and to basketball either presently relate to my league or either beneficially or adversely will in the near future.

We would certainly be in favor of S. 298. We feel that it does address the issue on the moving of franchises. Insofar as your bill, Senator Specter, we think it is an extremely good bill, but we do have two objections that we would like to share with you this morning.

Senator Specter. Please do.

Mr. Foreman. One, I think that the thrust of the bill, maybe because it initially related to football, puts an overdue emphasis on the position played by the municipality. Now, admittedly, I would assume that most football stadia are owned or have been constructed and owned by the State or city or county governments.

In the indoor sports—basketball, hockey, and indoor soccer—I think we have a different situation. My belief is that more than 50 percent of the arenas in which we play are owned by private individuals or are under long-term lease arrangements with lessees.

And to that extent, we would not be comfortable with an arrangement where the municipality, as provided in your bill, played such an important part, particularly the position of having the right to make a first refusal and then elect whether it felt it had been treated fairly or not in going to court.

The other comment we would propose to make is that your three criteria, I think, in analyzing the Danforth bill, which lists 12 or 13—I think the three that you specify embrace a good number of those in the Danforth bill. But we in our league have not adopted a set of regulations yet, but I have prepared the same and we feel that the three that you referred to could to some degree be expanded to take other factors into consideration.

One that I might mention is the culpability of the very person wishing to move the franchise. Has he stimulated, has he really been the culprit in creating this atmosphere of the financial problem in the city? We feel that would be an important consideration.

In closing, I would like to address one other point that I think you raised with Mr. Stein, and I might say, Senator, I share your opinion of Mr. Stein's attributes and qualifications as counsel.

I would like to make one suggestion that responds to concerns that professional sports leagues will abuse whatever antitrust immunity might be given to them. I would suggest a sunset provision, perhaps 3 years. If, at the end of that period of time, Congress should decide that indeed its trust has been abused, the exemption can be removed.

This will answer concerns of those people who say sports is attempting to gain some sort of unfair benefit. Review it at that time. There is an analogous circumstance for this kind of limitation. In 1973, Congress enacted Public Law 93-107 which conditioned the continuation of an antitrust exemption on certain blackout-lifting provisions.

Having examined the situation for a period of 3 years, Congress, in 1975 and thereafter, concluded that professional sports was operating in a manner consistent with the public interest. In the instant case, a sunset provision indeed may answer some of the current concerns that have been expressed.

I appreciate the opportunity to appear before your committee, Senator.

Senator SPECTER. Well, thank you very much, Mr. Foreman. You say the league is in the process now of preparing transfer regulations. Please supply them both to this Committee and to me personally. I would very much like to see them.

If you have any recommendations for specific language changes for S. 172 to accommodate soccer, I would be interested to see that as well because I think the Congress is going to act on this subject. I have discussed the matter with the other Senators—Senator Gorton, Senator Danforth, Senator DeConcini.

These matters are going to be coming to the Judiciary Committee for final review and it is my expectation that there will be broader coverage, and I am open to it. My only concern has been to address the specific problem which comes up, and it was the football franchise transfer.

I really should have been concerned with the hockey issue as well, as Mr. Stein has discussed with me. I did not realize that there was a dominant constitution over the U.S. Constitution which would have regulated that so as to have left the ultimate power there.

But as specific as you could be would be helpful because when we get around to drafting, the more help we get the better off we are.

I have a very fine counsel, Neal Manne, who is working on these matters, but we have so many matters and so much to do.

And you men and women are in the middle of these operations and really see the problems, and we draft as best we can from a conceptual point of view. But the experience you could bring to bear would be very helpful.

Mr. FOREMAN. We will be most pleased to do that.

Senator SPECTER. I very much appreciate your staying the full morning. I think these are important issues. I do hope that we will come to grips with them and provide some guidance. Thank you all very much.

Mr. FOREMAN. Thank you, Senator.

Senator SPECTER. The record will stay open for statements by other Senators, and I would like to submit for the record questions of Senator Leahy for response by Commissioner Rozelle.

[The following was received for the record:]

QUESTIONS OF SENATOR PATRICK LEAHY FOR PETE ROZELLE

Question. Mr. Rozelle, S. 172, Senator Specter's "professional Football Stabilization Act of 1985," deals only with your sport and not with other professional sports franchises. In your view, are the problems of professional football different in kind from the problems of other professional sports, and if so, how?

Question. Mr. Rozelle, Senator DeConcini's bill, S. 298, deals primarily with the antitrust aspects of the sports franchise relocation problem. Or course, S. 172 goes much further and would set up substantive standards by which a proposed relocation could be judged. If the Congress were to conclude that some action must be taken to deal with what it regards as unfair relocations, which legislative approach would you find more appropriate?[1]

Senator SPECTER. That concludes the hearing. Thank you all very much.

[Whereupon, at 12:20 p.m., the committee was adjourned.]

[Prepared statement follows:]

---

[1] Answers not received by press time.

STATEMENT OF EARL FOREMAN, COMMISSIONER
MAJOR INDOOR SOCCER LEAGUE, INC.

Members of the Senate, my name is Earl Foreman and I am the Commissioner of Major Indoor Soccer League, Inc., having served in that capacity since the formation of the league in 1977. The indoor soccer season commences in November of each year and ends in June when the play-offs conclude. MISL has just started its seventh season of play and its league games will be played before approximately three-and-a-half million spectators this year. At present, MISL has thirteen members which are located in Chicago, the Twin Cities, San Diego, Pittsburgh, Cleveland, St. Louis, Wichita, Dallas, Kansas City, Las Vegas, Tacoma, Los Angeles and Baltimore.

Indoor soccer in the United States itself is a relatively new sport. In the winter of 1974, the Russian Red Army soccer team came to Philadelphia and gave an exhibition before some thirteen thousand spectators, bringing the ingredients that American fans look for in a sport: speed, skill, and scoring. Since its first season of League play in the 1978-79 season, attendance has increased every year. In the 1983-84 season, some 16% of MISL's games were completely sold out and the then-ten franchises averaged approximately

9,000 fans per game. It is expected that these figures will again improve this year.

S. 172, Introduced by Senator Specter

As introduced, S. 172, the bill introduced by Senator Specter, applies only to professional football. Although the Specter bill, by its terms, is limited to professional football, in Mr. Specter's introductory remarks on January 3, he recognized that the scope of the bill might be broadened. He said:

> Although this bill addresses only the issue of football franchises, it is my thought that the Congress should explore the possibility of extending such legislation to cover all professional sports.

(Congressional Record, January 3, 1985, at S285.)

Senator Specter's bill addresses the issue of a team unilaterally moving, but too narrowly in one sense and too broadly in another. While it would provide certain criteria to prevent a team owner from picking up and leaving, it grants an exemption to a league's refusal to allow a move only on one of three criteria. There may be many reasons why the league would not want a team to move. And I might add that many of these are recognized in S. 259, introduced by Senators Danforth and Eagleton. Absent the broad authorization in Senator DeConcini's bill, we may desire to take into account considerations other than simply those three in the Specter bill.

Moreover, Senator Specter's bill would begin to "municipalize" teams. Pursuant to Section 4(3), the local governmental authority "shall decide whether the criteria for relocation have been satisfied." If, in the opinion of the local government, the criteria have not been met, then it has the right to sue in federal court. How often will the local government -- forced to judge its own performance -- hold that it has failed to do an adequate job?

But suppose the relocation criteria are met? That same section then says "the governmental authority or any person it selects" shall have a right of first refusal in the purchase of the team. Suddenly, in all circumstances, we would have a partner, albeit a silent one. And all teams -- whether playing in publicly or privately-financed arenas (and a majority of MISL teams play in private arenas) -- would be subject to this right of first refusal and the right to match. Not only does this present conceptual difficulties, the statute is virtually silent as to how these rights shall be exercised.

S. 298, Introduced by Senator DeConcini

I note that S. 298, introduced on January 24 by Senator DeConcini, does in fact cover the professional team sport of soccer. Senator DeConcini's bill addresses a number of questions that professional sports faces. In the two most significant areas, S. 298 would allow leagues to decide whether franchise shifts in fact are in the best interest of the economic and geographic stability of the member teams and would allow for revenue sharing which would be used to "promote comparable economic opportunities for the member clubs."

The passage of S. 298 would allow leagues to prevent unilateral decisions to move by individual teams. In speaking for the Major Indoor Soccer League, it is the position of our League that unapproved franchise shifts are not in the best interest of the league, the cities, or ultimately the fans.

In the area of revenue sharing, the Major Indoor Soccer League stands in a different position than a number of the other leagues. Our strongest and most successful franchises have not been those in the largest markets. They have been developed where local ownership has aggressively marketed and promoted the team in the local community. Nevertheless, looking to the future, we have attempted to balance from a population standpoint the areas where teams can distribute via television and cable. Section 2(1)(b) of S. 298 would sanction this practice and enable this league-wide balance to exist.

I would like to make one suggestion in response to concerns that the professional sports leagues will abuse whatever antitrust immunity might be given to them. I would suggest a sunset provision, perhaps three years. If at the end of that three year period Congress should decide that indeed its trust has been abused, the exemption can be removed. This will answer the concerns of those who say sports is attempting to gain some sort of unfair benefit. Review it at that time. There is an analogous circumstance for this kind of limitation. In 1973, Congress enacted Public Law 93-107, which conditioned the continuation of an antitrust exemption on certain blackout-lifting provisions. Having examined the situation for a period of three years, Congress in 1975 (and thereafter) concluded that professional sports was operating in a manner consistent with the public interest. In the instant case, a sunset provision indeed may answer many of the concerns raised.

Thank you.

PROFESSIONAL SPORTS ANTITRUST IMMUNITY

WEDNESDAY, JUNE 12, 1985

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met at 10:40 a.m., in room 226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Specter, DeConcini, Simon, McConnell, Grassley, and Heflin.

Staff present: Kenneth Starling, antitrust counsel; Neal Manne; Edward Parker; Christopher Dunn; Victor Maddox; Kolan Davis; and Arthur Briskman.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

This morning, the committee continues hearings on the antitrust issues raised by the relocation of professional sports teams.

Specifically, the committee is examining solutions proposed by Senator Specter in S. 172, by Senator DeConcini in S. 298, and by Senators Danforth and Eagleton in S. 259, which was reported out of the Commerce Committee and is before us on a 45-day referral. The committee has held earlier hearings on these issues on February 6 and March 6. At our previous hearings, the committee heard from professional sports leagues, professional players' associations, and team owners.

These hearings and the bills before us have been generated in part by the litigation arising from relocations or proposed relocations of teams, and under the leagues' attempts to restrain such moves. Under certain circumstances, team relocations can have a serious and disruptive impact on the host communities that invest in the teams. The sports leagues have an interest in controlling proposed team relocations, but they contend that the potential application of antitrust law to their collective decisions severely limits their ability to exercise such control.

Among the questions raised in these hearings are the following: Should antitrust questions raised by league efforts to control team movements be left to the courts under current law? Should the league's collective decisions be given immunity from antitrust law? If immunity is to be conferred, should Congress fashion a list of criteria by which the leagues must make their decisions on team relocations? If immunity is to be granted, should it extend to matters beyond team relocations, such as revenue sharing and selection of team owners?

We will hear the views of a distinguished group of witnesses on all of these issues today. We will hear from several of our distinguished colleagues, from representatives of affected municipalities, from the Justice Department, from team owners, and from a television network. They will describe the potential benefits and problems inherent in the proposed legislative solutions before us.

Senator Specter, you have an opening statement?

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator **Specter**. Yes. Thank you very much, Mr. Chairman.

Mr. Chairman, I thank you for convening these hearings, and I thank you for your cooperation in bringing before the Judiciary Committee these important subjects. You were very cooperative back in 1982 when this problem first became apparent when the move of the Oakland Raiders was then imminent to Los Angeles, and hearings were convened in this committee and the issue was analyzed and legislation was introduced by this Senator at that time which would have provided an antitrust exemption for the league to establish standards to control franchise movement.

My sense at that time, and my sense now, is that there is a public interest involved with a sports franchise, that as long as there is an adequate stadium and a team is making money it ought not to be permitted to move at random in order merely to increase its profits, without regard to the fans' interest in the team.

My own sense was that it was very destructive, going back to 1958, when the Brooklyn Dodgers left Brooklyn and the New York Giants left New York, and that was the start of the movement of the—of the exodus of teams—an exodus which I think has been unfair to the fans. The matter came into focus sharply last December with the proposed move of the Philadelphia Eagles to Phoenix, AZ. And, at that time, hearings were held, and this Senator introduced S. 172, which followed the legislation that I had introduced in the 97th Congress and would grant an antitrust exemption to permit the National Football League to regulate the movements of teams, and really to prohibit the movements—likely movement of the Raiders from Oakland to Los Angeles, in situations where there was an adequate stadium and profits were being made. At that time, I said that I was prepared to see the legislation broadened to include other sports—hockey, basketball, soccer—during the consideration of the hearings on the matter. The original legislation, S. 172, was limited to football because that was the specific problem that existed at that time.

I understand the interest of the National Football League in having a broader antitrust exemption, and I do not believe that it is realistic to obtain a broader antitrust exemption at this time.

There is an interest in having an antitrust exemption on revenue sharing. That is not a problem which is currently pending before the National Football League, although it is possible that it could become a problem at some time in the future. My own sense is that we ought to address the issue which is before us in very serious terms, and that relates to franchise removal, and this is more than a matter which simply affects a sports team or two sports teams, or sports fans. It is a multimillion-dollar enterprise across this country.

For my own State, Pennsylvania, we have the Flyers, the Eagles, the Steelers, the Penguins, the 76ers, and also there are implications for baseball that may come into play at a later time. It is a matter of great importance. Many jobs are involved. There is great economic impact. So it is a matter, in my judgment, of very considerable importance which warrants the attention of this committee and Congress.

I thank you, Mr. Chairman.

The Chairman. The distinguished Senator from Arizona.

OPENING STATEMENT OF SENATOR DENNIS DeCONCINI

Senator DeConcini. Mr. Chairman, I want to thank you again for your consideration in holding yet another hearing on the issue of professional sports and antitrust.

I have made a number of statements before. I am pleased that the Commerce Committee voted with the approval of S. 259, which is very similar to my bill, S. 298. S. 259, like 298, will allow the professional sports leagues to enforce their team relocation and revenue sharing rules without fear of antitrust exposure. Thus the Commerce Committee approval of S. 259, in my view, with legislation three and a half years ago. I think it is appropriate that the Judiciary Committee consider today these three bills together. I am hopeful that the committee will report a bill. If they do not do so, today's hearings will provide significant information on the issue for when it is considered on the Senate floor in the form of S. 259.

The importance of this legislation demonstrated by the distinguished panels of witnesses that are going to appear today, our colleagues, and one distinguished former colleague, Joseph Tydings, a member of the House and Senate from Maryland, are going to be with us today. In addition, leaders from professional sports leagues, teams and local communities in which they play will also testify. We are also provided a privilege to welcome the Acting Assistant Attorney General.

Considering the wide range of issues confronting the special sports industry today, I would hope that our witnesses will focus on the issue of franchise stability and team relocation. Our committee's jurisdiction is limited, and legislation that will be discussed today is not intended to change television broadcasting laws, in fact, recent lawsuits or modify labor laws in any way.

Legislation that I introduced on this subject is that the past two Congresses was retroactive. I would still hope, through legal actions, franchises that have left their home cities would be returned. I conclude, however, that this objective cannot be met legislatively. Our goal is to prevent the further unwarranted relocation of professional sports teams by giving professional sports leagues the authority to enforce their rules that promotes stability without fear of antitrust treble damages exposure. Enactment of this legislation will once again allow professional sports leagues to make a business decision that is necessary for their success.

Professional sports franchise owners possess the collective knowledge and experience to make these judgments, in my opinion. As with any business, they will also have to live with the consequences of their decision, be they profitable or otherwise. The best way to protect the interests of the fans and communities is to allow the collective business judgments of sports franchise owners to determine the location of franchises and the distribution of league income.

Mr. Chairman, I think it is very important that we move on these bills; that the league itself is stymied. I think fans are uncertain. Communities are shaky and worried about their future. I hope that we can mark this bill up very shortly.

Thank you, Mr. Chairman.

The Chairman. Thank you, Senator.

At this point I wish to place a statement of Senator Danforth and a copy of S. 259 in the record.

[Aforementioned follows:]

STATEMENT OF SENATOR JOHN C. DANFORTH
BEFORE THE SENATE COMMITTEE
ON THE JUDICIARY

JUNE 12, 1985

Mr. Chairman, let me begin by thanking the Judiciary Committee for permitting me to present my views.

One of the bills under consideration today is S. 259, the Professional Sports Team Community Protection Act of 1985. S. 259 was introduced by Senators Eagleton, Dixon, Simon, and myself on January 22, 1985.

The Commerce Committee held two days of hearings on S. 259. Witnesses included representatives of the Major Indoor Soccer League, Major League Baseball, the National Football League, the National Basketball Association, the United States Football League, and the National Hockey League. The Committee also heard from representatives of various cities -- some of which now field professional teams, some of which have applied for expansion teams, and some of which have lost teams.

Following these hearings, the Commerce Committee reported S. 259 by a vote of 10 to 6. As reported, the Professional Sports Community Protection Act of 1985 provides that, notwithstanding any other laws, professional football, basketball, hockey, and soccer leagues may approve or disapprove team moves, share revenues, and select or terminate team ownership.

S. 259 also contains provisions designed to ensure procedural and substantive fairness for the parties involved in a relocation decision. For instance, judicial review pursuant to S. 259 must occur in a neutral U.S. district court thus avoiding the appearance of unfairness that may result where the case is heard in either the club's old home territory or its proposed new home city. This neutral venue requirement should also eliminate "races to the courthouse." Requiring a league's review of a club's planned move to be based on specific criteria enumerated in the bill should also contribute to substantive fairness. And, review based on these criteria has the additional advantage of creating a record for judicial review of a league decision.

Finally, S. 259 requires publication of any league expansion plans. This provision should help cities seeking expansion teams to know the criteria by which they are being judged. Also, of course, Congress will have a better understanding of plans for future league expansions.

In summary Mr. Chairman, S. 259, as reported by the Commerce Committee, represents a careful balance of the interests of cities, leagues, and teams. A city will be able to block the relocation of a team when the move is unjustifed. A league will be able to implement rules ensuring team stability provided due regard is given to the antitrust laws.

And finally, there are occasions when team moves are justified. In these situations neither the league nor the home city should be able to block the move.

At the time that S. 259 was ordered reported, the Commerce Committee considered and rejected three amendments. The first amendment would have required that no professional football league or any of its member clubs may into enter an agreement with more than two television networks for the broadcasting of games unless each competing professional football league has an agreement with at least one network for televised broadcasting of that league's games. This amendment was rejected by the Committee by a vote of 13 to 4.

I believe the Committee correctly rejected this amendment. S. 259 concerns the legality of internal league practices. It does not deal with interleague competition. Second, a lawsuit regarding this very issue is currently pending. And finally, this amendment could very well reduce the number of NFL games on free television.

The second amendment offered would have required the National Football League to increase its membership by at least 6 teams by the 1990 season. The Committee voted 14 to 2 against the amendment. Clearly the amendment interfered with a business judgment best made by the NFL rather than Congress.

The third amendment would have prohibited any professional football league from selling or otherwise transferring any rights to televise football games in a member club's home territory unless those games are also available on sponsored television. By a vote of 10 to 5, the Committee rejected the amendment.

This last amendment concerns one of the most controversial aspects of S. 259 and similar legislation -- the impact of such legislation on the availability of NFL games on free television. Mr. Chairman, currently the NFL has no contract with pay television for the broadcast of games and S. 259 does not give the NFL the authority to make such contracts. In fact, S. 259 expressly states that it is not intended to alter any laws concerning the broadcasting or telecasting contracts of a league or its member clubs.

Mr. Chairman, in the current situation, the owners have all the advantages while the leagues and particularly the cities are essentially powerless. Enactment of S. 259 will level the playing field and ensure that the interests of all three parties are carefully considered during any team relocation decision.

II

Calendar No. 217

99TH CONGRESS
1ST SESSION

S. 259

[Report No. 99–69]

To protect the public interest in stable relationships among communities, professional sports teams and leagues and in the successful operation of such teams in communities throughout the Nation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 22 (legislative day, JANUARY 21), 1985

Mr. EAGLETON (for himself, Mr. DANFORTH, Mr. DIXON, and Mr. SIMON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY 14 (legislative day, APRIL 15), 1985

Ordered, that if and when reported by the Committee on Commerce, Science, and Transportation, the bill be referred to the Committee on the Judiciary for the purpose of considering the antitrust issues in S. 259 only, for a period of not to exceed forty-five calendar days; and that if at such time the Committee on the Judiciary has not reported S. 259, the committee be immediately discharged from further consideration thereof and the bill be placed on the calendar

MAY 21 (legislative day, APRIL 15), 1985

Reported by Mr. DANFORTH, with an amendment

[Strike out all after the enacting clause and insert the part printed in itlaic]

MAY 21 (legislative day, APRIL 15), 1985

Referred to the Committee on the Judiciary pursuant to the order of May 14, 1985

JULY 8, 1985

Committee discharged; placed on the calendar

A BILL

To protect the public interest in stable relationships among communities, professional sports teams and leagues and in the successful operation of such teams in communities throughout the Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Professional Sports Community Protection Act of 1985".~~

~~FINDINGS~~

~~SEC. 2. The Congress finds that it is in the public interest—~~

~~(1) to preserve stability in the relationship between professional sports teams and the communities in which such teams may successfully operate;~~

~~(2) to encourage professional sports leagues to operate with policies that promote the successful operation of teams; and~~

~~(3) to promote the equitable and prompt resolution of disputes arising from the interstate operations of such leagues concerning the location of professional sports teams.~~

~~DEFINITIONS~~

~~SEC. 3. As used in this Act, the term—~~

~~(1) "home territory" means the geographic area within which a member club operates and plays the~~

~~majority of its home games, as defined in the governing agreement or agreements of the relevant league on January 1, 1985, or upon the commencement of operations of any league after such date;~~

~~(2) "local government" means a city, county, parish, town, township, village, or any other general function governmental unit established by State law;~~

~~(3) "member club" means any member of a professional sports league;~~

~~(4) "person" means any individual, partnership, corporation, or any unincorporated association, or any combination or association thereof, or any political subdivision;~~

~~(5) "professional sports league" or "league" means an association composed of two or more professional sports teams which has adopted, accepted, or put into effect rules for the conduct of professional sports teams which are members of that association and the regulation of contests and exhibitions in which such teams regularly engage, and which has been engaged in competition in such sport for more than seven years;~~

~~(6) "professional sports team" means any group of professional athletes organized to play major league football, basketball, hockey, or soccer and which is also~~

~~a member of a league subject to the provisions of this Act; and~~

~~(7) "stadium" or "arena" means the principal physical facility within which a professional sports team plays the majority of its home games.~~

~~LAWFUL AGREEMENTS~~

~~SEC. 4. Notwithstanding any other provision of law, it is lawful for a professional sports league or its member clubs—~~

~~(1) to enforce rules or agreements authorizing the membership of such league to decide that a member club shall not change its home territory;~~

~~(2) to enforce rules or agreements for the division of revenues of such league or member clubs that tend to promote comparable economic opportunities for member clubs; or~~

~~(3) to enforce rules or agreements establishing procedures and standards for the selection or termination of the ownership of member clubs, if such policies are equally binding on all member clubs and are adopted by a majority vote of member clubs.~~

~~NOTICE OF PROPOSED CHANGE IN HOME TERRITORY~~

~~SEC. 5. (a) Any person seeking to change the home territory of a member club to a location other than such member club's home territory shall, in accordance with this section,~~

~~furnish notice of such proposed change at least six months before the commencement of the season in which the member club is to play in such other home territory.~~

~~(b) Such notice shall be furnished to representatives of the professional sports league, the owner or operator of the member club's stadium or arena, and the local government for the locality in which such stadium or arena is located. Such notice shall—~~

~~(1) be in writing and delivered by certified mail;~~

~~(2) be published in one or more newspapers of general circulation within the member club's home territory; and~~

~~(3) contain a statement of the member club's intention to change its home territory, an identification of the proposed location of such member club, a summary of the reasons for such change in home territory, information regarding the factors specified in section 6(b) of this Act, and the date on which such change is scheduled to become effective.~~

~~(c) The professional sports league shall make a determination with respect to the location of such member club's home territory within three months after receipt of the notice required by this section. In making such a determination, the league shall conduct proceedings at which interested parties are afforded an opportunity to present oral or written testi-~~

~~mony regarding a change in the location of a member club's home territory. The league shall keep a record of all such proceedings.~~

~~DECISIONS ON TEAM LOCATIONS~~

~~SEC. 6. (a) No person may change the home territory of a member club unless—~~

~~(1) such person furnishes the notice required by section 5 of this Act; and~~

~~(2) the professional sports league determines, in accordance with subsection (b) of this section, that a change in the home territory of such member club is reasonable and appropriate.~~

~~(b) In determining under this section whether a change in the home territory of a member club is reasonable and appropriate, the league shall consider and make specific findings regarding—~~

~~(1) the adequacy of such member club's existing stadium or arena in relation to other stadiums or arenas within such league;~~

~~(2) the adequacy of facilities related to or in the vicinity of such stadium or arena, including transportation, vending, retail and other facilities;~~

~~(3) the desire and ability of the owner or operator of such stadium, arena or facilities and officials of local government to remedy any inadequacies in such stadi-~~

~~um, arena or facilities, or to provide other incentives or arrangements which would make it reasonable and appropriate for such member club to continue to be located in its home territory;~~

~~(4) the extent to which such member club has, directly or indirectly, received public financial support by means of construction of any publicly financed playing facility, special tax treatment, or other form of public financial support, and the extent to which such support continues or remains unamortized;~~

~~(5) the effects of such change on any contract or agreement entered into by such member club and any public or private party;~~

~~(6) the extent to which the ownership or management of such member club has contributed to any circumstance that might demonstrate the need for a change in the member club's home territory;~~

~~(7) the amount of such member club's operating revenues from sports operations, including net revenues from ticket and other stadium or arena receipts from games played in the member club's stadium or arena, in relation to the median and average levels or revenues for other member clubs in the three seasons preceding the date of the member club's notice furnished under section 5 of this Act;~~

~~(8) the extent of any net operating losses experienced by such member club, exclusive of depreciation and amortization, in the three seasons preceding the date of the member club's notice furnished under section 5 of this Act;~~

~~(9) the extent to which fan support for such member club has been demonstrated by attendance, ticket sales, and other factors while the member club has played in its home territory;~~

~~(10) the number of professional, university, and college teams playing the same sport as the member club which are currently conducting sports operations in the member club's home territory and in the proposed location of such member club, and the effects that the proposed change in the location of such member club may have on such teams and their leagues;~~

~~(11) any bona fide offer to purchase such member club at fair market value, if such offer includes continued location of such member club in its home territory;~~

~~(12) the extent to which such member club has engaged in good faith negotiations concerning reasonable arrangements under which such member club would continue to be located in its home territory and~~

~~in its stadium or arena (or a suitable alternative facility in its home territory); and~~

~~(13) such other factors as may be appropriate.~~

~~JUDICIAL REVIEW~~

~~SEC. 7. (a) A determination by a league under section 5(c) of this Act may be reviewed in a civil action brought in accordance with this section by—~~

~~(1) a member club which has furnished notice under section 5 of this Act;~~

~~(2) the owner or operator of a member club's stadium or arena, or the owner or operator of any facility in which such member club seeks to play the majority of its home games; or~~

~~(3) the local government for the locality in which the stadium or arena of such member club is located.~~

~~(b) Any civil action brought under this section must be commenced within thirty days of such determination. Such action must be brought in a district court of the United States which has jurisdiction over such action under section 1331 of title 28, United States Code. No such action may be brought in any district of a State which contains such member club's home territory, or which contains the proposed location of such member club.~~

~~(c) The district court shall set aside such a determination by a league only if the district court finds that such de-~~

~~termination was not supported by substantial evidence on the record taken as a whole, or was obtained by corruption, fraud, or undue means. The district court may grant such relief as may be appropriate, including declaratory and equitable relief.~~

~~(d) Nothing in this Act shall affect any action commenced under any provision of law regarding permission to change the home territory of a member club, except that no such action may be commenced in any district of a State which contains such member club's home territory or which contains the proposed location of such member club.~~

~~RULES AND AGREEMENTS OF PROFESSIONAL SPORTS LEAGUES~~

~~SEC. 8. (a)(1) In order to enforce a rule or agreement under section 4 of this Act, a league must have filed such rule or agreement with the Secretary of Commerce. Such rule or agreement must be in a form that identifies the league's member clubs, and the manner in which such rule or agreement was adopted by such member clubs.~~

~~(2) Not later than thirty days after a rule or agreement is filed under this section, the Secretary of Commerce shall publish in the Federal Register a notice regarding such rule or agreement. The notice shall identify such member clubs and describe in general terms such rule or agreement.~~

~~(b) A professional sports league shall include in its rules or agreements a requirement that it consider and make specific findings regarding the factors specified in section 6(b) of this Act in making any determination whether a change in the home territory of a member club is reasonable and appropriate.~~

~~INAPPLICABILITY TO EMPLOYMENT MATTERS~~

~~SEC. 9. Nothing contained in this Act shall change, determine, or otherwise affect the applicability or inapplicability of the antitrust laws (as defined in the first section of the Clayton Act (15 U.S.C. 12) and in the Federal Trade Commission Act (15 U.S.C. 41 et seq.)), the labor laws, or any other provision of law to the wages, hours, or other terms and conditions of employment of players in any professional sports league, to any employment matter regarding players in any such league, or to any collective bargaining rights and privilege of any player union in any such league.~~

~~EFFECT ON STATE LAW~~

~~SEC. 10. Notwithstanding any other provision of law, no State or local government may maintain or enforce any law or regulation that imposes any limitation on the rules, agreements, or conduct of any professional sports league or member clubs which is inconsistent with this Act.~~

~~EFFECT ON CONTRACTS~~

~~SEC. 11. Nothing in this Act shall affect any contract, or provision of a contract, relating to the use of a stadium or arena between a member club and the owner or operator of any stadium or arena or any other person, unless such contract, or provision of a contract, is inconsistent with this Act.~~

~~EFFECTIVE DATE~~

~~SEC. 12. This Act shall apply to any change or proposed change in the home territory of a member club which occurs on or after January 23, 1985.~~

That this Act may be cited as the "Professional Sports Community Protection Act of 1985".

FINDINGS

SEC. 2. The Congress finds that it is in the public interest—

(1) to preserve stability in the relationship between professional sports teams and the communities in which such teams may successfully operate;

(2) to encourage professional sports leagues to operate with policies that promote the successful operation of their member clubs;

(3) to promote the equitable and prompt resolution of disputes arising from the interstate operations of such leagues as they concern the location of professional sports teams; and

(4) to encourage conditions conducive to expansion of professional sports leagues, by promoting stability in the location of professional sports teams through enforcement of rules or agreements for the division of revenues of such leagues or member clubs and for the selection or termination of owners of such member clubs, in accordance with the provisions of this Act.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "home territory" means the geographic area within which a member club operates and plays the majority of its home games, as defined in the governing agreement or agreements of the relevant league on January 1, 1985, or upon the commencement of operations of any league after such date;

(2) "interested parties" includes representatives of the local government for the locality in which a member club's stadium or arena is located, a member club which has furnished notice under section 5 of this Act, and the owner or operator of such stadium or arena; the term may include any other affected party, as so designated by the relevant league;

(3) "local government" means a city, county, parish, town, township, village, or any other general function governmental unit established by State law;

(4) "member club" means any member of a professional sports league;

(5) "person" means any individual, partnership, corporation, or any unincorporated association, or any combination or association thereof, or any political subdivision;

(6) "professional sports league" or "league" means an association composed of two or more professional sports teams which has adopted, accepted, or put into effect rules for the conduct of professional sports teams which are members of that association and the regulation of contests and exhibitions in which such teams regularly engage, and which has been engaged in competition in such sport for more than seven years;

(7) "professional sports team" means any group of professional athletes organized to play major league football, basketball, hockey, or soccer and which is also a member of a league subject to the provisions of this Act; and

(8) "stadium" or "arena" means the principal physical facility within which a professional sports team plays the majority of its home games.

LAWFUL AGREEMENTS

SEC. 4. (a) Notwithstanding any other provision of law, it is lawful for a professional sports league or its member clubs, in accordance with the provisions of this Act—

(1) to enforce rules or agreements authorizing the membership of such league to decide whether a member club may change its home territory;

(2) to enforce rules or agreements for the division of revenues of such league or member clubs that tend to promote comparable economic opportunities for member clubs;

(3) to enforce rules or agreements establishing procedures and standards for the selection of the owners of member clubs, if such procedures and standards provide that (A) such selection shall require approval by not less than three-fourths of such member clubs, and (B) such selection is not to be exercised in a discriminatory manner; and

(4) to enforce rules or agreements establishing procedures and standards for the termination of the ownership of member clubs, if such procedures and standards provide that such termination shall (A) require approval by not less than three-fourths of such member clubs, (B) not be exercised in an arbitrary, capricious or discriminatory manner, and (C) only be

exercised in circumstances that clearly evidence a threat to the image or integrity of the relevant sport or the professional sports league.

(b) If any owner of a professional sports team violates any rule or agreement adopted pursuant to this section, the relevant professional sports league may bring a civil action in a district court of the United States which has jurisdiction over such action under section 1331 of title 28, United States Code, to enjoin such owner from such violation. The district court may enjoin such violation or any other action which would be a violation of any such rule or agreement.

NOTICE OF PROPOSED CHANGE IN HOME TERRITORY

SEC. 5. (a) Any person seeking to change the home territory of a member club to a location other than the location of such member club's home territory shall, in accordance with this section, furnish notice of such proposed change at least 6 months before the commencement of the season in which the member club is to play in such other location.

(b) Such notice shall be furnished to representatives of the relevant professional sports league, the owner or operator of the member club's stadium or arena, and the local government for the locality in which such stadium or arena is located. Such notice shall—

(1) be in writing and delivered in person or by certified mail;

(2) be published in one or more newspapers of general circulation within the member club's home territory; and

(3) contain a statement of the member club's intention to change its home territory, an identification of the proposed new location of such member club, a summary of the reasons for such change in home territory, information regarding the factors specified in section 6(b) of this Act, and the date on which such change is scheduled to become effective.

(c) The professional sports league shall make a determination with respect to the location of such member club's home territory within 2 months after receipt of the notice required by this section. In making such a determination, the league shall conduct proceedings at which interested parties are afforded an opportunity to present oral or written testimony regarding a change in the location of a member club's home territory. The league shall keep a record of all such proceedings.

DECISIONS ON TEAM LOCATIONS

SEC. 6. (a) No person may change the location of the home territory of a member club unless—

(1) such person furnishes the notice required by section 5 of this Act; and

(2) the professional sports league determines, in accordance with subsection (b) of this section, that a change in the home territory of such member club is reasonable and appropriate.

(b) In determining under this section whether a change in the location of the home territory of a member club is reasonable and appropriate, the league shall consider and make specific findings regarding—

(1) the adequacy of such member club's existing stadium or arena in relation to other stadiums or arenas within such league;

(2) the adequacy of facilities related to or in the vicinity of such stadium or arena, including transportation, vending, retail and other facilities;

(3) the desire and ability of the owner or operator of such stadium, arena or facilities and officials of local government to remedy any inadequacies in such stadium, arena or facilities, or to provide other incentives or arrangements which would make it reasonable and appropriate for such member club to continue to be located in its home territory;

(4) the extent to which such member club has, directly or indirectly, received public financial support by means of construction of any publicly financed stadium, arena, or playing facility, special tax treatment,

or other form of public financial support, and the extent to which such support continues or remains unamortized;

(5) the effects of such change on any contract or agreement regarding a member club's current location which has been entered into by such member club and any public or private party;

(6) the extent to which the ownership or management of such member club has contributed to any circumstance that might demonstrate the need for a change in the member club's home territory;

(7) the amount of such member club's operating revenues from sports operations, including net revenues from ticket and other stadium or arena receipts from games played in the member club's stadium or arena, in relation to the median and average levels or revenues for other member clubs in the three seasons preceding the date of the member club's notice furnished under section 5 of this Act;

(8) the extent of any net operating losses experienced by such member club, exclusive of depreciation and amortization, in the three seasons preceding the date of the member club's notice furnished under section 5 of this Act;

(9) the extent to which fan support for such member club has been demonstrated by attendance, ticket sales, and other factors while the member club has played in its home territory;

(10) the number of professional, university, and college teams playing the same sport as the member club which are currently conducting sports operations in the member club's home territory and in the proposed location of such member club, and the effects that the proposed change in the location of the home territory of such member club may have on such teams and their leagues;

(11) any bona fide offer to purchase such member club at fair market value, if such offer includes continued location of such member club in its home territory;

(12) the extent to which such member club has engaged in good faith negotiations concerning reasonable arrangements under which such member club would continue to be located in its home territory and in its stadium or arena (or a suitable alternative facility in its home territory); and

(13) such other factors as the league may be appropriate.

JUDICIAL REVIEW

Sec. 7. (a) A determination by a league under section 5(c) of this Act may be reviewed in a civil action brought in accordance with this section by—

(1) a member club which has furnished notice under section 5 of this Act;

(2) the owner or operator of such member club's stadium or arena, or the owner or operator of any facility in which such member club seeks to play the majority of its home games; or

(3) the local government for the locality in which the stadium or arena of such member club is located.

(b)(1) Any civil action brought under this section must be commenced within 30 days of such determination. Such action must be brought in a district court of the United States which has jurisdiction over such action under section 1331 of title 28, United States Code. No such action may be brought in any district of a State which contains—

(A) such member club's home territory, or

(B) the proposed location of such member club.

(2) Upon motion of any party, the district court may, for the convenience of the parties or in the interests of justice, transfer any such action to any district which has jurisdiction over such action under section 1331 of title 28, United

States Code, other than a district specified in paragraph (1) (A) or (B) of this subsection.

(c) The district court shall set aside such a determination by a league only if the district court finds that such determination was not supported by substantial evidence on the record taken as a whole, or was obtained by corruption, fraud, or undue means. The district court may grant such declaratory and equitable relief as may be appropriate, including injunctive relief and specific performance.

(d) In any case where interested parties have not been afforded an opportunity to present oral or written testimony in accordance with section 5(c) of this Act, the district court may, by order, require the relevant professional sports league to conduct additional proceedings at which such testimony may be presented, and to reconsider its determination under such section based on such testimony. Within 30 days after the date of any such order, such league shall reconsider and resubmit its determination to the district court, and the district court shall review such determination in accordance with the provisions of this section.

(e) If a league, pursuant to section 4(a)(4) of this Act, makes a determination to terminate the ownership of a member club, any owner of such member club may obtain review of whether—

(1) the compensation offered for such owner's interest in such member club is at a level which reflects the fair market of such interest; and

(2) such termination was made in an arbitrary, capricious or discriminatory manner.

RULES AND AGREEMENTS OF PROFESSIONAL SPORTS LEAGUES

SEC. 8. (a)(1) In order to enforce a rule or agreement under section 4 of this Act, a league must have filed such rule or agreement with the Secretary of Commerce. Such rule or agreement must be in a form that identifies the league's member clubs, and the manner in which such rule or agreement was adopted by such member clubs.

(2) Not later than 30 days after a rule or agreement is filed under this section, the Secretary of Commerce shall publish in the Federal Register a notice regarding such rule or agreement. The notice shall identify such member clubs and describe in general terms such rule or agreement.

(b) A professional sports league shall include in its rules or agreements a requirement that it consider and make specific findings regarding the factors specified in section 6(b) of this Act in making any determination whether a change in the home territory of a member club is reasonable and appropriate.

FORMULATION OF POLICIES CONCERNING EXPANSION

SEC. 9. (a) Within 1 year after the date of enactment of this Act or within 1 year after the provisions of this Act becomes applicable to a professional sports league, whichever is later, such league shall formulate and adopt a suitable policy consistent with the provisions of this Act setting forth the criteria and standards it will employ in determining whether and when any future expansion of such league will occur, and the number of member clubs which may be added by any such expansion.

(b) Within 5 days after the adoption of such policy, such league shall transmit a copy of such policy to the Secretary of Commerce. The Secretary of Commerce shall publish such policy in the Federal Register.

INAPPLICABILITY TO CERTAIN MATTERS

SEC. 10. Nothing contained in this Act shall—

(1) alter, determine, or otherwise affect the applicability or inapplicability of the antitrust laws, the labor laws, or any other provision of law to the wages, hours, or other terms and conditions of employment of players in any professional sports league, to any employment matter regarding players in any such league, or to any collective bargaining rights and privilege of any player union in any such league.

(2) alter or affect the applicability or inapplicability of the antitrust laws or any applicable Federal or State law regarding broadcasting or telecasting, including the Act entitled "An Act to amend the antitrust laws to authorize leagues of professional football, baseball, basketball, and hockey teams to enter into certain television contracts, and for other purposes", approved September 30, 1961 (15 U.S.C. 1291 et seq.), to any agreement between any professional sports league or its member clubs and any person not affiliated with such a league for the broadcasting or telecasting of the games of such league or its member clubs on any form of televison;

(3) affect any contract, or provision of a contract, relating to the use of a stadium or arena between a member club and the owner or operator of any stadium or arena or any other person; or

(4) except as provided in this Act, alter, determine or otherwise affect the applicability or inapplicability of the antitrust laws to any act, contract, agreement, rule, course of conduct, or other activity by, between, or among persons engaging in, conducting, or participating in major league football, basketball, hockey, or soccer.

(b) As used in this section, the term "antitrust laws" shall have the meaning given to such term in the first section of the Clayton Act (15 U.S.C. 12) and in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

EFFECT ON STATE LAW

SEC. 11. Notwithstanding any other provision of law, no State or local government may maintain or enforce any law or regulation that imposes any limitation on the rules, agreements, or conduct of any professional sports league or member clubs which is inconsistent with this Act.

EFFECTIVE DATE

SEC. 12. This Act shall apply to any change or proposed change in the home territory of a member club which occurs on or after January 23, 1985.

The CHAIRMAN. Our first witness today is Senator Albert Gore, Jr., from Tennessee.

Senator Gore, we are glad to have you with us and you may proceed.

STATEMENT OF HON. ALBERT GORE, JR., A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator GORE. Thank you very much, Mr. Chairman.

In keeping with the custom of the committee, I would ask that my full statement appear in the record and I will try to skip over some portions of it in my presentation.

The CHAIRMAN. Without objection, your entire statement will go in the record, and if you could give us the thrust of it in about 5 minutes.

Senator GORE. Well, that is even more than I requested, Mr. Chairman.

I appreciate the chance to testify here on the bills that you are considering, and particularly S. 259, which came out of the Commerce Committee on which I serve. I was active during the debate in the Commerce Committee on that bill.

I wanted to take this opportunity to share with you what I believe to be the relative argument opposed to this kind of legislation.

To begin with, Mr. Chairman and members of the committee, there certainly is a problem. There is no question about that. We have a situation where a single owner of a franchise can cavalierly extort extraordinary concessions from communities while threatening to move, and even then, in some cases, leave town, skulking out in the middle of the night with one of the community's most important assets. These are not hypothetical victims. Philadelphia and St. Louis have been threatened. Baltimore and Oakland have been abandoned.

However, although I agree with the sponsors of S. 259 and some of these other bills, franchises are unstable, and that the consequences have been severe, I believe that this bill is an inadequate response more likely to aggravate than solve the problem that it seeks to address.

Not, the fundamental cause of franchise instability in professional football is the artificial scarcity of franchises. That is the problem. And these bills do not address that problem.

We in the Congress, years ago, established an artificial monopoly and gave the football league the right to pool all of their resources, all of their revenues, and enforce the league rules. All right. They get an enormous sum of money from the television networks and they divide that up by each one of the franchises.

Now, Mr. Chairman, if you have a big pie and you have 10 pieces of that pie, you are going to get a pretty big piece, but if, all of a sudden, you slice the same sized pie into 15 pieces instead of 10 pieces, you are going to get a smaller slice. That is the single reason, the single powerful reason why the current owners in the National Football League refuse to allow expansion, and you have cities like Phoenix, you have cities like Memphis, TN, your other cities in this country that are growing prospering, thriving in the

Sun Belt areas and elsewhere. They have fans. They want NFL teams, and the current owners refuse to consider expanding.

Now, that is really what has caused the problem. The sponsors of the bill contend that if Congress would just give the NFL everything it wants, then it would consider expanding. Of course, the NFL adds that it would also have to be relieved of all of its legal problems and it would have to be shed of the antitrust suit filed by the United States Football League. And other conditions are also attached.

So, Mr. Chairman, as my colleague, Senator Gorton has said during the Commerce Committee consideration, if you believe the NFL assurances about their willingness to consider expanding if we give them everything they want, then we have a used bridge that we would like to sell you.

Now, since S. 259 was introduced, it has been suggested that the Congress is no place to arbitrate the process of winners and losers in the NFL franchise game. It is no secret that part of the reason this bill was introduced was the threat to existing franchises from raiding communities seeking to lure away a team. But I believe that this is a legitimate issue for us since it was an earlier Congress which waived antitrust laws for the NFL, contributing to the current problem before us today.

But S. 259 ignores the real cause of the problem and, instead, asks to further protect the NFL from the antitrust laws. This is a cure which is clearly worse than the disease.

To understand the relationship between earlier congressonal action and the current franchise instability problem, it is necessary to examine the television contract situation around the time the American Football League was formed in 1959. At that time, and in earlier years, the NFL sold television rights to their games on an individual rather than leaguewide basis. Unlike the NFL, the AFL teams agreed to pool their television rights and entered into a leaguewide contract with a single network. The NFL then changed its practice, pooled television rights on a leaguewide basis and entered into a 2-year contract with a single network to televise its games. This arragement by the NFL was challenged, however, by the U.S. Government, and in July 1961, in *United States* v. *National Football League,* the court held the NFL's network contract in violation of the antitrust laws. The AFL's leaguewide contract was not challenged and remained in operation, creating a certain competitive imbalance in favor of the AFL.

I would invite you to review the hearing record. Back in 1961, when the Congress considered the NFL request to get this antitrust exemption, during those hearing, the chief counsel of the committee questioned Commissioner Rozelle and his attorney about the competitive consequences of this antitrust exemption in leaguewide contract with more than one television network. And the following exchange appears in the record.

The committee counsel asked this question: "Now, if all the networks were tied up by one football league, the NFL, for example, would not the other league, the AFL, possibly be at a major competitive disadvantages?"

Mr. Rozelle responded, "I should certainly think so."

Committee counsel asked this question: "Now, to forestall against that possibility, do you believe that the bill should specifically prohibit a league from entering into a package contract with more than one network?"

NFL's counsel replies: "The objective of this legislation is to give us the right to do so on a single network, and when we have to reserve our thinking to the degree that you would now require us to go on a single network, I cannot see how we could have any objection to a provisions such as that."

And Mr. Rozelle spoke up and added: "If I might say there is no intention on our part of using more than one network if this legislation passes."

Now, what we have now, of course, is that we have contracts with all three networks and the none of the three networks will even discuss televising a fall schedule for the competing football league, and the net result of the antitrust exemption is that these franchises have become tremendously valuable.

Other cities that want franchises covet these franchises and they are going to continue to cause instability in the league until the NFL agrees to expand. That is the underlying cause of the problem. And any legislation that comes out of Congress ought to have a requirement that the NFL satisfies the tremendous demand in the country and expand the size of the league, and without consideration of a provision like that, I think all of these bills are missing the real cause of the problem and they should all be defeated.

Mr. Chairman, I took a little longer than 5 minutes, and I appreciate your courtesy.

The Chairman. Thank you very much, Senator.

Senator Specter, do you have some questions?

Senator Specter. Let me ask just one question of Senator Gore.

How would you specify an obligation by the league to expand? How can Congress really get into that in an effective way?

Senator Gore. I think that there are many ways to address the problem. I think you could get at it through the nature of the antitrust exemption to say that at least one of the television—that all three television networks can be tied up so that we can have a little competition. You might want to choose that route instead of requiring a commitment from the league to expand.

But if you want my recommendation on expansion, I would say something like six teams within the next 10 years, that they would expand by six teams within the next 10 years. I think that would be the kind of commitment that would satisfy the demand that is out there.

Senator Specter. But how can the Congress in our infinite wisdom, if any we have, make a determination that six teams can be accommodated or six teams would be the right number? Are we not really stepping into a field that we do not have any expertise at, any judgment, contrasted with the market conditions?

Senator Gore. Well, as I say, you could allow competition to solve the problem for you by allowing competition to work. But competition is presently frustrated by the artificial protections that we granted to the NFL today, and no real competition exists.

So if we are talking about enforcing this monopoly and, in these bills, strengthening and reinforcing the monopoly and giving even more power to the league, then I think it is perfectly reasonable to ask in return for concessions of this sort, that the NFL make commitment to expand.

Senator SPECTER. Thank you. You and I can pursue this on a more informal basis on the floor.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. Thank you, Senator Gore, in your leadership in trying to get the league to expand. I have to concur. I wish they would expand because I think most States would be a contender, as yours would.

But, Senator Gore, let me ask you this. I take it from your testimony, which I did not have a chance to read all of this, that you think the revenue sharing provisions, the pooling of the revenues is not a good idea. Is that right?

Senator GORE. Well, I am not saying that it is a bad idea in and of itself. I am saying that it has consequences which we should recognize and deal with. And one of those consequences is that it builds into the NFL a powerful disincentive to expansion, because immediately upon expansion the amount of money going to each existing owner is decreased.

Senator DECONCINI. Although the NFL says that that is not always the case. They have had expansions in the past, and they have negotiated new contracts with the broadcasters, and you need a new contract to do that.

Senator GORE. But the additional revenue has not come from expansion itself. It has come from a continued increase in the popularity of the sport and the continued increase in the size of the television contracts. They know that in any given year, if the amount of money is divided by a larger denominator, then the amount received by each individual owner is going to be decreased.

Senator DECONCINI. My understanding from what the NFL has testified to here, when they expanded to Seattle and Florida, Tampa Bay, that in fact their next contract was substantially more. They do not know how much to attribute that to.

I think what you say is correct. The support of the sport is there. I have the same reservation that Senator Specter does. I would like to see them expand. All I can see Congress doing is ask them for that intention, and they told us here that, yes, they would expand.

Now, whether or not that would be 6 in 10 or 2 in 4 years, or anything else, I am not too sure.

I do want to thank you for bringing out the importance that that league has with the growth of this country really with national sports.

Senator GORE. There would be nothing to keep us from simply writing in a requirement for expansion as far as that goes. But to be satisfied just with the assurances when they come back, and I believe you asked the question during hearings last year, would you have to have these other problems taken care of as well? And the startling response of Mr. Rozelle was that, yes, we would have to have the problem with the antitrust suit with the USFL taken care of. We would have to have all our legal problems taken care of. And that assurance, I believe, is really not worth that much. And antitrust relief is the only leverage that we have. And my only argument is that the public should get something in return for giving the NFL everything it wants.

Senator DeConcini. Thank you, Mr. Chairman.

The Chairman. Senator Simon.

Senator Simon. Thank you, Mr. Chairman.

I am sorry. As you know, I was at a Rules Committee hearing, and I regret that I missed your testimony.

I gather your interest in an expansion team in Carthage, TN——

Senator Gore. We would be satisfied with one in Memphis. Carthage would be nice. Memphis has been trying to get a team for a long time. That is what originally provoked my interest in this issue. The closer I looked into it, the more I saw what I believe to be the injustice in the current situation, the same thing that Phoenix has experience, the same thing that led to the raid on Philadelphia, the same thing that led to Baltimore losing its team in the middle of the night because you have got an artificial scarcity, legally sanctioned by the Congress, giving enormous power and enormous revenue to a limited number of people.

Now, because there are lots of other cities who want one of these precious franchises, that has created a lot of instability in the league. The league come to Congress and they say, look, we appreciate our antitrust exemption, but we want a little more power and a little more of antitrust exemption so as to enforce stability in spite of all this clamoring from around the country to get one of these teams. And I am saying let us look at the underlying cause of the problem.

I am not opposed to the antitrust exemption per se. I think it is a good idea. I am a football fan, like everybody here, and I enjoy it tremendously. I think we ought to insure the stability of this league, but the challenge to the stability of the league is coming from the artificial scarcity, and it is insane for us to say to the NFL, OK, we will give you everything we want, but we will not disturb the nice little situation you have got with a relatively small number of people dividing up this enormous amount of money coming in from the TV networks every year.

Senator Simon. One final question.

In general, I do not favor creating more commissions or committees. But, I note that our former House colleague, Barbara Mikulski, has recommended the creation of a commission to study this issue. If we had such a commission report back in 120 days, we would not create something that just drags on and on.

Does this idea have any merit?

Senator Gore. I share your stated skepticism about the commission approach. But I also agree with you that in this case it might not be a bad idea. And I think it really ought to be explored.

Senator Simon. Thank you.

Senator Gore. Thank you, Mr. Chairman.

The Chairman. Thank you very much, Senator.

[Prepared statement follows:]

Testimony of Sen. Albert Gore, Jr.
before Judiciary Committee, June 12, 1985

Mr. Chairman, I appreciate the opportunity to testify today on S. 259, the "Professional Sports Community Protection Act of 1985". I was active during debate on this bill in the Commerce Committee, and I wanted to take this opportunity to restate the relevant arguments opposing the approach S. 259 takes in dealing with a legitimate public policy issue.

Certainly there exists a problem-- we have a situation where a single owner of a National Football League franchise, a major economic force in a community, can cavalierly extort extraordinary concessions from those communities while threatening to move, and even then, in some cases, skip town with one of the community's most important asset. These are not hypothetical victims-- Philadelphia and St. Louis have been threatened, and Baltimore and Oakland have been abandoned.

However, although I agree with the sponsors of S. 259 that franchises are instable, and that the consequences have been severe, I believe this bill is an inadequate response more likely to aggravate than solve the problem it seeks to address.

The fundamental cause of franchise instability in professional football is scarcity of franchises. The NFL has refused to expand to meet very real and measurable demand, and this has produced intense bidding by cities to lure and maintain existing franchises. And, so long as the NFL refuses to expand, professional team owners will continue to be able to extract enormous benefits and subsidies from municipalities, creating a kind of Sword of Damacles from which communities can never be fully protected.

Sponsors of this bill contend that if Congress would only give the NFL the stability it needs, it will expand, by two teams, in a couple of years. Of course, the NFL adds to that assurance that it must also be relieved of all its costly legal problems, and that it must rid itself of the antitrust suit from the United States Football League. Mr. Chairman, as my colleague Sen. Gorton said during our Committee consideration of this bill, if you believe these NFL assurances, we have a used bridge we'd like to sell you.

Since S. 259 was introduced, it has been suggested that the Congress is no place to arbitrate the process of winners and losers in the NFL franchise game. It is no secret that part of the reason this bill was introduced was the threat to existing franchises from raiding communities seeking to lure away a team. But I believe that this is a legitimate issue for us, since it was an earlier Congress which waived antitrust laws for the NFL, contributing to the current problem before us today. But S. 259 ignores the real cause of the problem and instead asks to further protect the NFL from the antitrust laws. This is a cure that is clearly worse than the disease.

To understand the relationship between earlier Congressional action and the current franchise instability problem, it is necessary to examine the television contract situation around the time the American Football League (AFL) was formed in 1959. At that time and in earlier years, the NFL sold television rights to their games on an individual rather than league-wide basis. Unlike the NFL, the AFL teams agreed to pool their television rights and entered into a league-wide contract with a single network. The NFL then changed its practice, pooled television rights on a league-wide basis and entered into a two-year contract with a single network to televise its games. This arrangement by the NFL was challenged, however, by the U.S. government, and in July, 1961, in United States v. National Football League, 196 F. Supp. 445 (E.D. Pa. 1961), the court held the NFL's network contract in violation of the antitrust laws. The AFL's league-wide contract was not challenged and remained in operation, creating a certain competitive imbalance in favor of the AFL.

Primarily in response to this lawsuit but also in recognition of the need for professional sports leagues generally to have league-wide contracts, Congress enacted the Sports Broadcasting Act of 1961, which permitted member clubs of professional leagues to pool their television rights without violating antitrust laws. In passing this legislation, Congress recognized the potential anticompetitive consequences of the exemption. This concern is reflected in the Act's legislative history, which makes clear that Congress did not intend that the Act be used to establish a monopolistic position such as the NFL now maintains through its league-wide contract with all three broadcasting networks. In this regard, the report of the House Judiciary Committee on the Sports Broadcasting Act of 1961 said the following:

> Some concern has been expressed that the language of this section might be considered to give an absolute exemption from the antitrust laws for any kind of television arrangements entered into by a league, and particularly an arrangement which might involve several networks and might thus exclude a competing league from all television coverage. *This is not the intent of H.R. 9096 which is designed to permit the sale of television rights by a league and its member clubs to a single network. The committee does not intend that an exemption from the antitrsut laws should be made available to a league or its members where the intent or effect of a joint agreement is to exclude a competing league or its members from the sale of any of their television rights.* (Emphasis added).

The record of the House Judiciary hearings on the bill are also pertinent. During those hearings, the Chief Counsel of the Committee questioned Commissioner Rozelle and his attorney about the competitive consequences of a league-wide contract with more than one network. The following exchange appears in the record for the August 28, 1961 hearing:

> Committee Counsel: Now, if all the networks were tied up by one football league, by the National Football League, for example, would not the other league, the American Football League, possibly be at a major competitive disadvantage?

Mr. Rozelle:	I should certainly think so.
Committee Counsel:	Now, to forestall against that possibility, do you believe that the bill should specifically prohibit a league from entering into a package contract with more than one network?
NFL Counsel:	The objective of this legislation is to give us the right to do on a single network, and when we have to reserve our thinking to the degree that you would now require us to go on a single network, I cannot see how we could have any objection to a provision such as that. (Emphasis added).

Commissioner Rozelle then proceeded to add:

Mr. Rozelle:	If I might say there is no intention on our part of using more than one network if this legislation passes.

In 1966, Congress acted again in this area when it exempted the merger of the AFL and the NFL from antitrust action. As a result of the merger, the enlarged NFL had contracts with two networks. Soon after the merger was consummated in 1969, Rozelle entered into a series of agreements with the third network. The NFL did not seek Congressional approval to do what the Act intended to preclude. Fortunately for the NFL, there was no competing league to complain to the courts or the Congress about an arrangement which Commissioner Rozelle admitted would place another football league at a "major competitive disadvantage."

By entering into contracts with all three networks, the NFL has been able to effectively eliminate the opportunity for a competing league to establish itself in the fall season. With no competition, they have been free to limit the available franchises and to ignore justifiable claims from municipalities for teams. Since the merger fifteen years ago, the NFL has enjoyed an increase in annual television revenues per team from close to $1.5 million in 1970 to $15 million in 1985. With the supply of franchises limited, the value of NFL franchises has increased dramatically. It is no wonder that the owners have been reluctant to establish new franchises. This would only decrease their share of available television revenues and diminish competition for, and accordingly the resale value of, their franchises.

I proposed two amendments in Committee that in different ways would have dealt directly with the scarcity that is at the root of the problem which the Committee sought to address. The first was an amendment to the Sports Broadcasting Act to limit the NFL to contracts with to two networks unless a competing league also had a network contract. The second amendment was more straightforward and would have required the NFL to expand by six teams by 1990. Neither amendment was accepted.

Unless something along the lines of the amendments which I offered is done, the current situation will only worsen. While I share the sponsors' interest in allowing the NFL and other professional sports leagues to better control the movement of franchises, I believe that S. 259 does nothing to solve the real cause of the problem. If you take the step of limiting the NFL antitrust exemption to operate consistent with the Congress' original intention, you would establish a competitive environment which in due course would bring more professional football, including NFL franchises, to more cities. This would put a quick halt to the frenzied bidding between competing cities for the limited number of existing franchises, which is only making owners richer, taxpayers poorer, and sports fans feel betrayed.

The CHAIRMAN. Now we have the Maryland panel, I believe, next.

Senator Paul Sarbanes, former Senator Joseph Tydings, and Representative Barbara Mikulski. If they will come around.

Now, if you will put your statements in the record and take 3 or 4 minutes and give us the thrust of it. We have got a lot of witnesses.

STATEMENTS OF MARYLAND PANEL CONSISTING OF HON. PAUL SARBANES, A U.S. SENATOR FROM THE STATE OF MARYLAND; FORMER SENATOR JOSEPH TYDINGS ON BEHALF OF GOV. HARRY HUGHES, STATE OF MARYLAND; AND HON. BARBARA MIKULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Senator SARBANES. I understand that, Mr. Chairman. I will be very brief.

I ask that my full statement be included in the record.

The CHAIRMAN. Without objection, we will do that with all three of them.

Senator SARBANES. Mr. Chairman, members of the committee, I just want to underscore two or three points.

First, this committee has jurisdiction over the antitrust laws. That is why this legislation is here. It is very important to appreciate that an exemption is being sought to the normal situation, which is the application of the antitrust laws. This has tended to be viewed in the perspective as though the exemption is the normal course of affairs. That is not the case, and the burden is on those seeking the exemption.

If the Congress is to grant the exemption, it seems to me it has to have a very careful review of how the public interest is being served.

Now, I agree with Senator Gore, the essential problem here is a matter of franchise scarcity. We, of course, have suffered an incredible blow in Baltimore with a team that was pirated away in the middle of the night. You have this incredible situation of communities outbidding one another. The owner can in effect drive the team into the ground and still comes out way ahead of the game because of the financial incentives he receives elsewhere in order to move the team.

Now, if the league is to obtain further antitrust exemptions, it seems to me it is reasonable for the Congress to require that the league address the basic problem, and that is the underlying question of franchise scarcity.

The question was asked earlier—what could the Congress do? The Congress, very simply, if it chose to, could go as far as not only mandating additional franchises, but also mandating where they are going to be. I do not think we should necessarily go that far. But I do take very strongly the position that if we are going to provide a major exemption to the existing legal framework that we have not only the right but also perhaps the obligation to assure that in response the underlying problem of league franchises is addressed.

Now, I commend to the committee the sense of Senator Gorton and Senator Gore with respect to the bill reported by the Commerce Committee. I want to contrast sharply the statements by the commissioner of football and the commissioner of baseball at the end of that report. The most that Commissioner Rozelle would do is say that they look toward 1988 or 1989 as a target for a two team expansion, subject to the environment of professional sports.

First, there is no assurance of expansion. Second, they have no way of determining where it is going to go. Third, those two cities which lost franchises under the most flagrant of circumstances will not have their situation addressed. And I simply submit to members on the panel who have been through that experience, and maybe come out on the other side of the fence to just pause for a moment and think about what the situation might have been. But the league, of course, is seeking here exemptions that deal with questions of sharing revenues, questions of how the league will operate with respect to expansion, and questions with respect to ownership selection, team location, and revenue sharing—all involving important antitrust questions. And it seems to me that if we are going to exempt them from the established framework of law we ought to obtain in response a commitment from the league to address the underlying question of franchise scarcity which lost plagued those of us who have had teams and have plagued cities which have been seeking teams.

I very much hope that the committee, in its deliberations, will view this question in that perspective.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

[Prepared statement follows:]

STATEMENT OF SENATOR PAUL S. SARBANES
ON THE
PROFESSIONAL SPORTS COMMUNITY PROTECTION ACT OF 1985

Mr. Chairman, I want to thank you for the opportunity to appear before the Senate Judiciary Committee regarding the Professional Sports Community Protection Act of 1985. Hearings on this legislation by this Committee as a result of sequential referral will permit a detailed review of all legislative proposals in this area including their anti-trust implications. The hearings on this subject to date have focused on the problems arising out of the arbitrary relocation of sports franchises. These problems, exemplified by the experiences we have had in Baltimore and Oakland, have shown us what we can expect in the future if this issue remains unresolved.

Four years ago the Raiders began this game of musical chairs by abandoning their loyal fans in Oakland for supposedly greener pastures in Los Angeles. Baltimore's beloved Colts were spirited away under cover of darkness just a few years later. Last fall, the City of Philadelphia seemed on the brink of losing the Eagles, and even now they are not secure. Possible moves appear regularly in the headlines...the St. Louis Cardinals, the Minnesota Twins, the Pittsburgh Pirates, the list goes on and on, and no one can predict when it will end. Meanwhile, our nation's cities will continue their efforts to lure professional sports teams away from each other, squandering precious resources in the process.

In testimony before the Senate Commerce Committee in the previous Congress, National Football League Commissioner Pete Rozelle said "Federal law as currently developed ignores fan, league, and public interests that need protection." The Supreme Court's refusal earlier this year to hear the appeal of the Los Angeles Raiders antitrust judgment against the NFL has left the resolution of this issue to action by the Congress. To be sure, relocation remains a serious problem, and Senator Gorton proposed a most thoughtful solution which would protect our urban communities from such loss. I joined in co-sponsoring that bill, S. 287. It is my own belief that a more balanced and responsible approach is embodied in that legislation, which did not require the Congress to grant further anti-trust exemptions.

The problem before the Congress with regard to professional sports is threefold: to promote franchise stability; to preserve the league system of professional sports; and to alleviate the artificial scarcity of franchises. We must seek a way to allow the leagues every opportunity to govern their own affairs responsibly, while reserving the right to act in the public interest when necessary. Unfortunately, I do not believe that any of the bills before you today represents such an approach.

The legislation before you grants anti-trust exemptions to the leagues allowing them to regulate themselves, which they supposedly would do in the public interest as well as their own. This, they tell us would clear up the legal environment and allow them to expand. But anti-trust exemptions for the sports industry are not new. A Supreme Court decision in 1922 and Congressional actions in 1961 and 1966 granted exemptions that have created in major league baseball and in the NFL a disincentive to expand by creating an artificial climate in which the leagues have been insulated from normal market forces. In trying to help the leagues provide for equality on the playing fields, we have allowed professional sports to forego normal business practices and have created an inequity in franchise allocation. In providing exemptions for mergers, collective bargaining and for broadcast rights we have created a financial arrangement which makes expansion unattractive to existing team owners.

In the twenty years since the last exemption was granted, the NFL has expanded only by the four teams provided for in the merger agreement. This is in a time when rapid growth in cities in the south and west clearly demonstrates their ability to support franchises. These cities have been forced to try to out bid each other in attempts to lure existing teams away from their homes. In the last few years, an entire new league has grown up, and been successful in attracting fan support.

Mr. Chairman, the problem we purport to address here today is franchise instability. But in order to take effective action we must look to the roots of the problem. The cause of franchise instability is the artificial scarcity of those franchises, and the cause of that scarcity is the leagues' refusal to expand. The leagues will not expand because it is not financially advantageous for them to do so. It is not advantageous for them to expand because they have received anti-trust exemptions which have granted them privileges that make their present situation too profitable for the owners to be willing to divide the pie any further. It would be a grave mistake on our part to compound this problem by granting further exemptions.

In years past, the leagues came to the Congress with a problem, and we were quick to respond without considering the long term implications of our actions. Now we have reached the point where we must take the time for a retrospective look at the road we have traveled and make a judgment about the efficacy and appropriateness of our actions. Have the anti-trust exemptions we have granted solved some problems only to create other, more difficult ones? What effect will new and broader exemptions have on the future of professional sports? What will this mean to the many communities hoping for a franchise of their own? What will it mean to the communities desperately trying to keep the franchises they have? What will this mean to the broadcast media, from which the leagues and owners receive such large sums of money? What will it mean to the average sports fan? Will he still have easy access to sports broadcasts on television, or will he have to subscribe to a cable service to see his favorite team? And, finally, what will it mean to the cities of Baltimore and Oakland, whose faithful fans were always so supportive of their teams? Where is the hope of a replacement team for the ones taken from them?

There are still too many questions left unanswered, or even unasked, and there is no hearing record on which to base such sweeping grants of immunity. It seems clear to me that this whole complex issue needs considerably more study before the Congress will have enough information upon which to make a reasoned decision. I urge the Committee to take steps to see that this is done and am confident that when we are able to piece together the whole picture, Congress will act in such a way as to provide a new, more stable legal framework for the professional sports industry. Only within such a framework, where teams can participate in league competition with the unreserved support of the communities in which they play can sports continue to fulfill the important role it plays in American life.

I thank you, Mr. Chairman, for this opportunity to appear before you, and welcome your careful review of the issues and questions raised here today.

The Chairman. I am going to turn the chair over now to Senator Specter. I have another engagement. You may proceed now. I believe you are next.

STATEMENT OF REP. BARBARA A. MIKULSKI

Ms. Mikulski. Yes. Thank you very much, Chairman Thurmond. I wish to thank my colleagues in the Senate for inviting me to participate in this hearing. I sit on the Energy and Commerce Committee in the House of Representatives, and in the House of Representatives that is the committee that has jurisdiction over these matters, much as the Commerce Committee does in the U.S. Senate.

We held extensive hearings on legislation pending in the House on protecting the sports teams, and I come before you today to essentially make a few points.

No. 1, I introduced legislation paralleling Senator Gorton's in the U.S. House of Representatives to guarantee both team stability and also mandate team expansion.

You have had hearings on the Gorton bill, and I wanted to go over those details. The things that emerged over in our House hearings centered around stability and scarcity, the two things that are articulated by Senators Gore and Sarbanes.

I come before you this morning to affirm our need to look at the issues of scarcity, stability, and expansion, and offer an alternative idea to that which is presented to you today.

A variety of bills have been introduced in the Congress, attempting to restrict team movement, unless specific criteria are met.

At the same time, big league sports want antitrust exemption, without giving the fans or local communities any guarantees. With the rush of business of Congress, it is often difficult for us to evaluate these various legislative proposals, so I have introduced in the House of Representatives a commission, a Professional Football Fan Protection Commission, that would be intercommittee.

What it would do is to be limited to a 6-month period. It would have no new additional funding or any of those things that commissions often do, but the most important thing is it would set up a special study group within Congress to explore the issues related to scarcity, and that which causes scarcity. The Commission would explore the changing state of the electronic media, which might cause the movement of important games to TV. It would also take a look at the anticompetitive conduct of competing sports leagues. It would also take a look at what would be the measures, both in the areas of antitrust, tax, and a whole other host of things that, No. 1, would increase competition, decrease the bidding wars that have gone on, and I believe that rather than applicating a particular bill at this time, the proven course of action would be to stop, take a look, not drag it out, but within a 180 days essentially be able to report back to both the U.S. Senate and the U.S. House of Representatives what is the best way to create a sports law framework.

We have been essentially doing this by piecemeal. We have been giving a lot of goodies away, primarily benefiting the owners. I believe as we move ahead now we really do need an agreed-upon total framework on what sports laws should be, and so that is the suggestion I bring to you.

Failing the idea of wanting to move ahead, then I hope one adopts the Gorton/Gore/Mikulski thrust, and guarantees stability in mandating expansion, and I yield back whatever time I might have.

I thank the committee for its attention.

[Statement follows:]

STATEMENT BY THE HONORABLE BARBARA A. MIKULSKI, REPRESENTATIVE OF THE THIRD DISTRICT OF MARYLAND BEFORE THE U.S. SENATE COMMITTEE ON THE JUDICIARY

JUNE 12, 1985

THANK YOU, MR. CHAIRMAN, FOR INVITING ME TO TESTIFY THIS MORNING. AS YOU KNOW, THE ISSUE OF PROFESSIONAL SPORTS TEAM RELOCATIONS IS ONE WHICH I HAVE DEVOTED SUBSTANTIAL TIME AND ATTENTION IN THE INTEREST OF PREVENTING A REOCCURRENCE OF THE DISTRESSING EVENTS IN BALTIMORE LAST YEAR.

ON APRIL 4, 1985, THE ENERGY AND COMMERCE SUBCOMMITTEE ON COMMERCE, TRANSPORTATION AND TOURISM, OF WHICH I AM MEMBER, COMPLETED A HEARING ON THE PROBLEM OF PROFESSIONAL SPORTS TEAM RELOCATIONS. WE RECEIVED TESTIMONY FROM NUMEROUS PUBLIC OFFICIALS, PROFESSIONAL SPORTS LEAGUES, PLAYERS' REPRESENTATIVES, AND FANS. TWO PRINCIPLES WERE CLEARLY ENUNCIATED BY MANY OF THOSE PARTICIPANTS. AN EXTENSIVE REPORT RELEASED BY THE CONGRESSIONAL RESEARCH SERVICE ON APRIL 2, 1985 ALSO DENOTED THE FOLLOWING PRINCIPLES:

- STABILITY: THE RISK OF TEAM RELOCATIONS IS NOT ONLY OF CONCERN TO BALTIMORE OR OAKLAND BUT IS OF CONCERN TO STATES AND MUNICIPALITIES ACROSS THE UNITED STATES; AND

- SCARCITY: THE PRESSURE FOR TEAMS TO RELOCATE IS A DIRECT

RESULT OF AN ARTIFICIAL SCARCITY IN TEAM SUPPLY CREATED BY ANTITRUST EXEMPTIONS PREVIOUSLY GRANTED BY CONGRESS. THIS SCARCITY OF TEAMS, PARTICULARLY IN THE NFL, HAS BOOSTED THE MARKET VALUE OF A TEAM BY MILLIONS OF DOLLARS. IT HAS RESULTED IN DESTRUCTIVE BIDDING WARS BETWEEN CITIES WHICH ARE COMPELLED TO PRESENT OWNERS WITH TREMENDOUS BENEFIT PACKAGES AT TAXPAYER EXPENSE.

A VARIETY OF BILLS HAVE BEEN INTRODUCED IN THE CONGRESS ATTEMPTING TO RESTRICT TEAM MOVEMENT UNLESS SPECIFIC CRITERIA ARE MET. THE NFL AND OTHER SPORT LEAGUES HAVE SUPPORTED PROPOSALS THAT REINVEST THE LEAGUES WITH THE POWER TO APPROVE OR DISAPPROVE FUTURE RELOCATIONS. THE NFL HAS USED THIS PREDATORY ENVIRONMENT TO PROMOTE LEGISLATION WHICH WOULD PROVIDE BROADER ANTITRUST EXEMPTIONS. I AM GRAVELY CONCERNED THAT ANY SUCH LEGISLATION WILL EXACERBATE TEAM SCARCITY, THEREBY, PREVENTING LEAGUE EXPANSION. SUCH LEGISLATION SHOULD BE OF PARTICULAR CONCERN TO CITIES WHICH MAY SEEK TEAMS AND CITIES WHOSE EXISTING TEAMS MAY BE THREATENED IN THE FUTURE.

UP TO NOW, CONGRESS HAS ONLY REVIEWED THESE ISSUES IN A PIECEMEAL MANNER WHENEVER THE ISSUES WERE PRESENTED BY THE NFL OR OTHER SPORTS LEAGUES. THE EMPHASIS HAS ALWAYS REMAINED ON THE RIGHTS OF THE LEAGUES AND OWNERS. VERY LITTLE EMPHASIS HAS EVER BEEN PLACED ON THE RIGHTS OF COMMUNITIES AND THE SPORTS FANS.

FOR THIS REASON, ON JUNE 7, 1985 I INTRODUCED THE "PROFESSIONAL FOOTBALL FAN PROTECTION COMMISSION", H. CON. RES 162 WHICH WILL ESTABLISH A SHORT TERM INTERCONGRESSIONAL COMMISSION TO EVALUATE THE CURRENT LEAGUE SYSTEM FROM THE PERSPECTIVE OF THE SPORTS FAN.

THIS COMMISSION WILL EVALUATE VARIOUS LEGISLATIVE PROPOSALS AND MAKE RECOMMENDATIONS TO THE CONGRESS OF ALTERNATIVES TO RELIEVE THE TEAM SCARCITY THAT UNDERLIES THE PROBLEMS WE CURRENTLY EXPERIENCE. THE COMMISSION WILL ALSO EXPLORE THE CHANGING STATE OF THE ELECTRONIC MEDIA WHICH MAY CAUSE THE MOVEMENT OF IMPORTANT GAMES TO PAY TV, AND CHARGES OF ANTICOMPETITIVE CONDUCT BY COMPETING SPORTS LEAGUES. THIS COMMISSION HAS BEEN CAREFULLY DESIGNED TO AVOID THE VALID OBJECTIONS OF MANY IN CONGRESS TO COMMISSIONS IN GENERAL. IT WOULD REQUIRE NO ADDITIONAL APPROPRIATION AND WOULD BE STAFFED AND FINANCED FROM THE BUDGETS OF THE HOUSE AND SENATE COMMITTEES WITH JURISDICTION OVER THIS LEGISLATION. ITS TERM WOULD ONLY BE SIX (6) MONTHS AND IT WOULD HAVE BROAD SUBPOENA POWERS.

IT IS TIME FOR THE CONGRESS TO SOLVE THESE PROBLEMS AT THEIR SOURCE IN A QUICK AND DECISIVE MANNER, AND TO PROTECT THE INTERESTS OF SPORTS FANS AND THE COMMUNITIES IN WHICH THESE TEAMS ARE LOCATED. WE NEED ANSWERS TO QUESTIONS THAT THE NFL HAS CAREFULLY AVOIDED OUR ASKING.

Senator SPECTER. Thank you.

I would like to turn now to Senator Tydings.

Mr. TYDINGS. Mr. Chairman, distinguished Senators of the committee, my name is Joseph Tydings. I am here representing the State of Maryland and Gov. Harry Hughes with respect to the legislation that is pending before you, and I would ask that a copy of his statement be at this time inserted in the record.

Part of that statement includes a resolution of the National Association of Governors with respect to this issue, and I would point that out and ask that that be incorporated in the record.

Senator SPECTER. It will be made a part of the record.

[Information follows:]

STATEMENT BY THE HONORABLE HARRY R. HUGHES
GOVERNOR OF THE STATE OF MARYLAND
BEFORE THE
U.S. SENATE COMMITTEE ON THE JUDICIARY
CONCERNING S.259 AND RELATED LEGISLATION

June 12, 1985

Mr. Chairman and distinguished members of the Committee, my name is Joe Tydings. I am a partner in the Washington, D.C. office of the law firm of Finley, Kumble, Wagner. I represent the State of Maryland and Governor Harry R. Hughes with respect to the legislation considered here today. Governor Hughes expresses his apology for not joining you but, unfortunately, his schedule prevented his appearance. The issue of professional sports team relocations is of profound concern to the Governor both as the executive representative of a State directly impacted by the loss of a cherished sports establishment and as the spokesman of the National Governors' Association. The Governors' Association passed a resolution during its winter meeting which I submit on behalf of Governor Hughes for your consideration and inclusion in the record. This resolution urges the enactment of "legislation that balances the legitimate interests of sports franchise owners with their obligations to the States and communities in which they play." For reasons discussed below, it is the Governor's view that the legislation considered by the Committee today fails to adequately achieve that balance.

I. Introduction .

A number of hearings have been held in the House and the Senate on this issue and I need not reiterate the facts behind the relocation of the Baltimore Colts to Indianapolis. The bottom line is that a powerful State and local interest exists for preserving a stable league system. We agree with the National Football League (the "NFL") that the status quo will not prevent future team relocations. Maryland estimates that the Colts move cost over $35 million in economic activity per year throughout the State. The loss of the Colts hurt the local hotels, restaurants, the suppliers of concessions, and caused a significant loss of state and local taxes.

State and community investment of public funds in professional sports teams is growing. Public funds have been used to build new stadiums and arenas, refurbish old facilities, provide access roads and sewer and water facilities, provide conveniently located public lands, provide police and other emergency and traffic services, and grant a variety of tax concessions. The Community's interest creates the television market which is so critical to the financial success of any sports franchise. Finally, the community provides direct financial support through the purchase of tickets, concessions and other revenue-generating items.

When a team vacates a city, taxpayers suffer both economically and through the loss of pride and esteem that the status of a "big league city" can generate. The City of Oakland and Alameda County are $30 million in debt as a result of operations of the Oakland Alameda County Coliseum and will pay $1.5 million per year until 2004 to retire its construction bond obligation.

Sports exist on a professional level in America today only because of the exceptional support provided by the sports fans. These sports fans deserve the protection of their elected representatives. Unfortunately, sport fan loyalty has been "rewarded" by increased ticket and concession prices and by the loss of a franchise, regardless of the level of fan support, if an owner thinks he can get a better deal elsewhere. According to a comprehensive Congressional Research Service study on this issue, which I commend to your attention, recent removals have not been the result of substantial economic losses or lack of fan support, but have resulted from sheer economic opportunism. The impact on abandoned cities, in terms of civic, financial and psychological investment, requires congressional intervention this year.

II. Stability and Scarcity

Before commenting directly on the legislation before the Committee, the climate which has created recent relocations and threatened relocations needs to be understood.

The professional sports industry is the only American industry which enjoys antitrust exemptions without related oversight. In 1961, Congress granted major sports leagues express antitrust exemption to permit pooled sales of sponsored TV broadcasts to networks. This has permitted the leagues to negotiate for network TV contracts on behalf of all their members from a position of unparalleled strength. The leagues then split the national TV revenues they receive equally among their members.

In 1966, Congress granted the NFL an express antitrust exemption to merge with the competing AFL, thereby, extinguishing a pending lawsuit against the NFL by the AFL and the risk of increasingly intense AFL competition.

To quote Senator Charles McM. Mathias (R-MD) in prior testimony on this issue, we should not continue to allow the leagues to exercise unbridled power "because they are supposed to play football, or baseball -- not monopoly."

The unintended result of these seemingly innocuous antitrust exemptions has been to undermine the stability of existing teams by creating team scarcity in the face of an ever increasing market demand for existing teams. Team owners have used their congressionally mandated market power to drive up the value of existing teams by intentionally limiting their number. Those wise architects of the Sherman and Clayton Antitrust Act realized this risk of monopoly power over five decades ago. Since 28 NFL team owners are permitted to divide national TV revenues into 28 equal parts, why should they voluntarily agree to admit new franchises and divide the pie into 30 or 32 smaller pieces? Senator Mathias has correctly observed that "experience has painfully demonstrated that we cannot expect owners to forego consideration of private gain for the sake of public benefit." The public benefit must be protected by the public's elected officials.

This team scarcity has resulted in destructive bidding wars between cities which are compelled to present owners with tremendous benefits at taxpayer expense. The City of Arlington, Texas actually purchased the local broadcasting rights of the Texas Rangers for 10 years from the team owner for $7.5 million as an inducement to attract a professional team, after agreeing to enlarge the local stadium at public expense and provide a long-term lease at most advantageous terms to the team. The City lost almost $3 million over the 10-year period when it was unable to adequately syndicate the broadcast of Ranger games. It has been estimated that the total loss to the City over a 30-year period will be over $21 million, a cost which will be borne solely by the taxpayers.

Indianapolis risked over $80 million in construction of the Hoosier Dome without a major tenant and then spent millions to lure the Colts from Baltimore.

Thus, the fallout from this destructive predatory environment is not only manifest in those cities in which former local heros no longer play in community stadiums and arenas, but also in those cities where public officials are jeopardizing public revenues to retain teams or attract the existing teams of other communities.

Congress has assisted in the creation of what are "essentially cartels whose purpose is to restrict competition and divide markets among members," according to the CRS study. In order to understand how league members have exercised the responsibility that flows from their increased market power, one only need look at the record; two new franchises in the NFL in 20 years, despite prior testimony of NFL Commissioner Pete Rozelle that scarcity is not a problem because the NFL will expand "because it has done it in the past." The U.S. population increased by over 25 million people during that same period. Despite Mr. Rozelle's repeated assurances that prior expansion has taken place without "dictate or pressure from Congress," every new NFL franchise since 1960 coincides precisely with the passage of federal legislation that was advantageous to the NFL.

1. The addition of Dallas in 1960 and Minnesota in 1961 coincided with the previously discussed antitrust exemption for revenue sharing;
2. The addition of Atlanta and New Orleans in 1965 coincided with the NFL's ultimately successful effort to obtain an antitrust exemption permitting it to merge with the AFL; and
3. The addition of Seattle and Tampa Bay in 1974 coincided with the NFL's successful attempt to persuade Congress to limit the term of proposed legislation prohibiting home-teams from "blacking out" televised games.

III. S.259 "Professional Sports Community Protection Act of 1985"

The "Professional Sports Community Protection Act of 1985" (S.259) is an effort by the NFL on behalf of its owner members to reinstate its power over relocation. The NFL's rule requiring that a club receive 3/4 approval by members for a team relocation was held to be a violation of Section 1 of the Sherman Antitrust Act as an "illegal combination in restraint of trade" in the L.A. Coliseum case (the Al Davis case). The NFL has argued that the recent flurry of team relocations and threatened relocations is due to the League's inability to enforce this rule in light of that decision. It further seeks to convince Congress that the League should be viewed sympathetically and separately from its individual members who actually provoked these disputes. These contentions fail to recognize certain basic truths:

1. The League is a product of the sentiments of its members who control its actions and set its policy;
2. It is the artificial scarcity of teams and resulting profit opportunities that caused the NFL's bylaws to be tested in the courts and which has created the current predatory environment in professional sports; and
3. The L.A. Coliseum decision did not deny the NFL the power to oversee relocations but merely struck down Rule 4.3 which required a 3/4 membership approval of a relocation with no specified criteria. The Court found that the vote against the Raiders' move could have been motivated by animosity rather than business judgment. The court suggested that the NFL adopt a new rule that includes objective standards for members to consider in approving relocation, including such factors as: adequacy of the population base in the city,

> the suitability of the new playing facility; the effect of the move on the marketability of the League games on TV, the effect of regional balance, and the weight of the effect of the move on fan loyalty, among others. The NFL has ignored this decision preferring instead to seek broader legislation to expand its existing framework of antitrust exemptions.

A. Objections. The "Professional Sports Community Protection Act of 1985" is an unsound and unwise piece of legislation for the following specific reasons:

1. S.259 seeks to involve communities in team relocation decisions, yet allows the leagues themselves to evaluate relocation criteria and approve team relocations that they determine to be merely "reasonable and appropriate."

2. Court review of league relocation decisions is unnecessarily restricted to lend a presumption of validity to a league's decision.

3. S.259 fails entirely to address the fundamental cause of team relocations; congressionally created monopoly power which has created team scarcity and operates as a disincentive to future league expansion.

4. S.259 actually exacerbates relocation pressures by further increasing league antitrust exemptions without extracting any meaningful concessions from a league to reduce team scarcity and benefit cities capable of supporting additional franchises.

5. S.259 has no teeth. It requires only league enunciation of some unenforceable expansion criteria in the future which can include the existence of a "healthy business and legal environment" or a "stable environment" as determined by a league. This same artfully ambiguous language has conditioned every response by the NFL Commissioner to cities seeking expansion teams. In light of the pending USFL suit against the NFL, a healthy legal environment may not occur for at least 5 years. We agree with Senator Mathias that it would be "remiss" and irresponsible "to sign away the public's only powers of supervision just because the leagues say 'trust me.'"

6. Finally, the new exemption for sharing of revenues is unnecessarily broad and would permit the leagues to share revenues from pay TV, thereby, encouraging owners to take some or all games off free TV.

B. Solutions

1. The "reasonable and appropriate" language of S.259 should be modified to require relocations to be "necessary and appropriate" as Senator Slade Gorton (R-WA) suggests.

2. Court review of league relocation decisions should be complete and de novo .

3. An amendment similar to the suggested legislative language attached as Exhibit "A" should require league expansion if supported by criteria that the leagues are required to designate.

4. If the Committee believes additional information is required to eliminate the unintended effects of prior congressional antitrust exemptions and prevent future complications, it should support a commission study similar to the "Professional Football Fan Protection Commission Act of 1985," introduced in the House by Rep. Barbara A. Mikulski (D-MD) as H. Con. Res. 162, which is enclosed for your review and is discussed later in this testimony.

IV. S.172 "Professional Football Stabilization Act," and Variations Thereof.

While also well-intentioned, the "Professional Football Stabilization Act," introduced by Sen. Arlen Specter (R-PA), would only narrowly restore the relocation powers to the leagues. Cities would be granted a "right of first refusal" to match any valid offer of a third party purchaser, which we would support. This approach, however, applies a "band-aid" to a festering infirmity which will continue to grow more difficult to correct if it is not properly addressed by Congress today. Leagues would be granted an additional antitrust exemption helping to restore stability without any obligation to protect the public interest by expanding the League, thereby, failing to address the more fundamental problem of team scarcity. As mentioned with respect to S.259 above, if relocation decisions are determined by the leagues, the courts must be accorded a broad power to examine the basis upon which the leagues' decisions are made through *de novo* review. Finally, if the Committee determines that team scarcity is the underlying cause of pressure to relocate, the Specter bill could be combined with a commission study of the current system of antitrust exemptions similar to that contained in the "Professional Football Fan Protection Commission Act of 1985" introduced by Rep. Mikulski.

V. H. Con. Res. 162 -- "Professional Football Fan Protection Commission Act of 1985"

Rep. Barbara A. Mikulski has introduced a legislative proposal to create a short-term Commission composed of members of Congress on House and Senate committees with jurisdiction over these issues. Up to this point, Congress has reviewed these issues in a piecemeal manner whenever the NFL sought additional powers and congressional protection. The emphasis has always remained on the rights of the League and its owners. Before Congress makes further concessions to the NFL, this legislation would establish a congressional commission to recommend legislative proposals preserving the rights of States, communities and the sports fans. This legislation, which is attached as Exhibit "B," contains the following elements:

1. The Commission would be composed of specific members of Congress and congressional staff and would require no additional appropriations;

2. The Commission would prepare a report within six months containing recommendations of how existing laws could best be structured to protect the rights of communities and sports fans;

3. A six-month moratorium would be imposed on the relocation of all professional football teams pending the report of the Commission; and

4. The Commission report would be available for use as a basis for informed and comprehensive legislation to control future team relocations and promote League expansion.

In conclusion, Mr. Chairman and Members of the Committee, it would be unwise to adopt what appears to be a quick fix to a deeply rooted problem. We have made specific legislative proposals for your review and consideration. These proposals would contemporaneously deal with the dual problems of league stability and team scarcity. The Governors and sport fans of this country are united in their desire to protect the rights of States, counties, municipalities and their communities. Cities which are fortunate enough to maintain a professional sports franchise require stability. Cities which have lost a franchise or have been denied access to a franchise despite the financial resources to sustain a team require league expansion to reduce the damaging effects of team scarcity. If the Committee adequately addresses these two fundamental issues, we have no doubt that the citizens of Baltimore, the State of Maryland and sports fans everywhere will be protected. On behalf of Governor Hughes, the State of Maryland, the National Governors' Association and myself, we appreciate the opportunity to focus your attention on these issues today.

NATIONAL ASSOCIATION OF GOVERNORS' RESOLUTION
SPORTS FRANCHISE STABILITY

Millions of Americans each year spend literally billions of dollars as consumers of professional sports. Sports franchises have become integral elements of state and community life in America and a close, mutually dependent relationship has evolved. States and communities create the environment within which the team plays; their interest generates the television market upon which the franchise is dependent. State and local governments build the roads, provide the funds for stadia, insure police protection and other services. The community purchases the tickets and patronizes the concessions. On the other hand, the sports franchise brings economic and other less tangible but no less important benefits to states and communities, conferring, in effect, "major league" status on its host.

In recent years, however, there has developed a growing concern among cities and states regarding the indiscriminate shifting of professional sports franchises. - -

While virtually all aspects of the relationship between sport franchises and state and communities in which they play can be handled at the state and local levels, only action by the United States Congress can remedy the problem associated with the indiscriminate shifting of sports franchises. But the problem of franchise mobility is merely the symptom of the true problem — franchise scarcity.

The National Football League currently is seeking an expanded exemption from the nation's anti-trust laws and the Congress now has before it legislation that would effectively deal with the problems of franchise stability. The nation's governors urge the enactment of legislation that balances the legitimate interests of sports franchise owners with their obligations to the states and communities in which they play.

EXHIBIT "A"

FINLEY, KUMBLE, WAGNER, HEINE, UNDERBERG, MANLEY & CASEY

DRAFT AMENDMENT TO S. 259 THE "PROFESSIONAL SPORTS COMMUNITY PROTECTION ACT OF 1985" RE: LEAGUE EXPANSION

The existing Section 9 of S. 259 shall be deleted in its entirety and shall be replaced with the following amendment:

"Sec. 9(a) Within one year after the date of enactment of this Act, such league shall formulate and adopt a suitable policy consistent with the provisions of this Act setting forth the criteria and standards it will employ in expanding the existing number of franchises holding authorized Franchise Certificates of Membership in such league by at least two teams on or before June 1, 1988. Those criteria and standards shall include, but shall not be limited to, the following:

(1) The extent to which the prospective franchise location has a demonstrated capacity to support a profitable professional sport team;

(2) The extent to which the prospective franchise location has a demonstrated history and record of fan support and loyalty for a professional sports team, as measured by the percentage of ticket sales over a substantial period of time;

(3) The extent to which the prospective franchise location has an adequate existing sports stadium or arena and the extent to which the stadium or arena authority of that locality is willing to remedy any deficiencies in such facility upon the guarantee of a suitable contract with a professional sport team franchise; and

(4) The extent to which the prospective franchise location has been prejudiced by recent judicial determinations striking down league rules and procedures concerning team relocations.

(b) Within five days after the adoption of such policy, such league shall transmit a copy of such policy to the Secretary of Commerce who shall promptly publish such policy in the Federal Register.

(c) A league shall publicly announce its members' approval of a new franchise owner and franchise location, selected pursuant to this Act, in writing delivered by certified mail, return receipt requested, to each applicant for membership to such league mailed at least fifteen days prior to the granting of a Franchise Certificate of Membership to such owner for such location.

(d) A determination of league policy established under Section 9(a) of this Act and the awarding of a new franchise pursuant to the policy established pursuant hereto may be reviewed in a civil action brought in accordance with this section by a local government for any locality in which application for membership has been made to such league.

(1) Any civil action brought under this section must be commenced in a United States District Court within 30 days of the publication of the league's expansion policy in the Federal Register pursuant hereto or the granting of a Franchise Certificate of Membership; and

(2) The District Court shall be entitled to a *de novo* review of a league's expansion policy and the decisions made pursuant to such policy. The District Court may grant such declaratory and equitable relief as may be appropriate, including injunctive relief and specific performance.

EXHIBIT "B"

99th CONGRESS
1st SESSION

H. CON. RES. ____

(Original signature of Member)

H.L.C.

Insert title here

To establish a congressional commission to examine the extent to which existing Federal laws protect the interests of fans of professional football and to recommend legislation to provide additional protections, and to express the sense of the Congress that no professional football franchise should relocate during the existence of the commission.

IN THE HOUSE OF REPRESENTATIVES

__________, 19___

Insert sponsor's names here

Ms. MIKULSKI submitted the following concurrent resolution; which was referred to the Committee on ____________________

CONCURRENT RESOLUTION

Resolved by the House of Representatives (the Senate concurring),

SECTION 1. SHORT TITLE.

This concurrent resolution may be cited as the ``Professional Football Fan Protection Commission Resolution''.

SEC. 2. ESTABLISHMENT.

There is established in the Congress a commission to be known as the ``Professional Football Fan Protection Commission'' (hereinafter in this concurrent resolution referred to as the ``Commission'').

SEC. 3. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.--(1) The Commission shall be composed of--

(A) four Members of the House of Representatives, two who serve on the Subcommittee on Commerce, Transportation, and Tourism of the Committee on Energy and Commerce of the House of Representatives and two who serve on the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary of the House of Representatives, appointed jointly by the chairman and the ranking minority member of each such committee; and

(B) four Senators, two who serve on the Committee on Commerce, Science, and Technology and two who serve on the Committee on the Judiciary of the Senate, appointed jointly by the chairman and the ranking minority member of each such committee.

(2) The President is requested to appoint an officer or employee of the Antitrust Division of the Department of Justice to assist the Commission in carrying out its duties.

(b) TERMS.--Members of the Commission shall be appointed within 30 days after the date of the adoption of this concurrent resolution. Except with respect to any appointment under subsection (c), any person not appointed to the Commission within such period may not serve on the Commission and shall not be counted for the purpose of fixing the number of members to constitute a quorum.

(c) VACANCIES.--Any vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(d) POLITICAL AFFILIATION.--Of the members of the Commission appointed under each of subparagraphs (A) and (B) of paragraph (1), not more than two shall be of the same political party.

(e) CHAIRPERSON.--The Commission shall select a chairperson from among its members.

SEC. 4. DUTIES AND POWERS.

(a) IN GENERAL.--The Commission shall--

(1) evaluate the extent to which existing Federal laws protect the interests of fans of professional football with respect to the number, stability, and relocation of professional football franchises; and

(2) recommend legislation to further protect such interests.

(b) MEETINGS.--The Commission shall first meet 10 days after the date on which members are appointed to the Commission. Thereafter, the Commission shall meet at the call of the chairperson or a majority of the members.

(c) HEARINGS.--The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The chairperson of the Commission, or any member designated by the chairperson, may administer oaths to any witness appearing before it.

(d) SUBPOENAS.--

(1) AUTHORITY.--The Commission may issue subpoenas requiring any witness to attend and testify and to produce evidence relating to any matter under investigation by the Commission, including the production of books, records, financial statements, correspondence, memorandums, papers, and documents. Such witness attendance and production of evidence may be required from any place within the United States at any designated place of hearing within the United States.

(2) ENFORCEMENT.--Compliance with any such subpoena may be enforced in the same manner in which compliance with any subpoena may be enforced by any committee of

either House of the Congress under section 6005 of title 18, United States Code.

(e) ADMINISTRATION.--Except as otherwise provided in this section, the Commission shall establish rules governing administration of the Commission, including procedures and times for meetings and hearings, and requirements for quorums.

SEC. 5. STAFF.

The Commission may use the services of not more than 1 staff person from each of the subcommittees and committees from which members are appointed under section 3(a) to assist the Commission in carrying out its duties.

SEC. 6. REPORT.

(a) DATE OF TRANSMISSION.--Not later than 6 months after the date on which the Commission first meets, the Commission shall transmit to the Congress a report containing the information described in subsection (b).

(b) CONTENTS.--(1) Such report shall evaluate--

(A) protections for--

(i) fans of professional football;

(ii) States and cities and other political subdivisions of such States in which professional football franchises are located; and

(iii) the publicly financed bond obligations of such States and political subdivisions;

from the adverse effects caused by the relocation of a professional football franchise from a community which supported the franchise by providing it with the use of a publicly financed stadium, special treatment under State and local tax laws, or other forms of public financial support;

(B) the effect that exemptions from the antitrust laws, which have been granted to professional football leagues, have had on franchise stability, league expansion, and the sharing of broadcast revenues;

(C) whether Federal law should provide additional exemptions from the antitrust laws to professional football leagues in matters including franchise relocation and the sharing of revenues from the telecasting of league contests and exhibitions;

(D) factors which may require the expansion of professional football leagues;

(E) the relationships between existing professional football leagues and the need for Federal legislation to ensure that such leagues and leagues established in the future will compete commercially on a fair and equitable basis;

(F) the need for Federal legislation to prevent the National Football League from providing for the telecasting of league contests and exhibitions by means which preclude viewing the contests and exhibitions on regular broadcast stations;

(G) whether Federal legislation concerning blackouts of telecasts of league contests and exhibitions should be reenacted;

(H) the need for Federal legislation to limit the number of commercial television networks with which a professional football league may contract for the telecasting of league contests and exhibitions;

(I) circumstances under which substantially equal access to stadiums should be afforded to competing professional football leagues; and

(J) any other matter relevant to the stability of professional football leagues and franchises and the interests of fans and communities.

(2) Such report shall also contain the legislative recommendations of the Commission with respect to the matters referred to in paragraph (1).

SEC. 7. EXPENSES OF THE COMMISSION.

Any expenses of the Commission shall be paid one-half from the contingent fund of the Senate and one-half from the contingent fund of the House of Representatives, upon vouchers approved by the chairperson of the Commission.

SEC. 8. TERMINATION.

The Commission shall cease to exist 30 days after the date on which it submits its report under section 6.

SEC. 9. SENSE OF THE CONGRESS REGARDING FRANCHISE RELOCATIONS.

It is the sense of the Congress that, in light of the Commission's mandate to study issues relevant to the relocation of professional football franchises, no professional football franchise which is a member of the National Football League or the United States Football League should relocate during the existence of the Commission.

Mr. TYDINGS. Finally, I ask that a very comprehensive congressional research study entitled "Proposed Sports Relocation Legislation: Background and Legal Applications," published by the Congressional Research Service, Library of Congress, dated May 20, 1985, also be incorporated.

Senator SPECTER. Without objection, it will be made a part of the record.

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

PROPOSED SPORTS RELOCATION LEGISLATION: BACKGROUND AND LEGAL IMPLICATIONS

Morton Rosenberg
Specialist in American
Public Law
May 24, 1985

Proposed Sports Relocation Legislation: Background and Legal Implications

For over three decades the world of professional sports has been beset by almost continuous tumult and turmoil that has often diverted, and at times overwhelmed and displaced, the national preoccupation with the endeavors of the athletes on the playing fields.[1] In an era of phenomenal growth and popularity,[2] the sports industry has experienced labor strife, interleague warfare, and internecine league struggles. The resultant strikes and lockouts,[3] litigation,[4] and congressional investigations and hearings on proposed sports legislation[5] have made the sports fans' traditional refuge in the sports pages from the turbulence of public affairs an increasingly more difficult task.

1/"Professional Sports and the Law -- A Study by the Select Committee on Professional Sports," 94th Cong., 2d Sess. (1966) (Committee Print), 1-2, 27 (Pro Sports Study); H. Rept. No. 94-1796, "Inquiry Into Professional Sports," Final Report of the Select Committee on Professional Sports, 94th Cong., 2d Sess. (1977), 1934 (Final Report); Berry and Gould, A Long Deep Drive to Collective Bargaining: Of Players, Owners, Brawls and Strikes, 31 Case West. Res. L. Rev. 685 (1981) (Berry and Gould).

2/ Final Report, supra note 1, at 9-18.

3/ There have been eight sports strikes, lockouts or boycotts since 1968: short lockout of football players from training camp (1968); short baseball player boycott of training camp (1969); three day strike, seventeen day lockout during football pre-season; thirteen day strike during regular baseball season (1972); forty-four day pre-season football strike causing cancellation of College All-Star Game (1974); eight day pre-season strike causing cancellation of 92 baseball exhibition games (1980); fifty day baseball strike during regular season (1981); seven week regular season football strike causing cancellation of seven games) (1983). See generally, Berry and Gould, supra note 1.

4/ For comprehensive treatments of litigation trends see particularly, Weistart and Lowell, The Law of Professional Sports (1979) (Weistart and Lowell); Sobel, Professional Sports and the Law (1977); Berry and Gould, supra note 1.

5/ See generally, Johnson, Congress and Professional Sports: 1951-1978, 445 Annals 102 (1979).

Each decade has seen a different mix of issues although certain themes have persisted in various guises. Resort to the courts and Congress for relief has been the common recourse. The 1950's witnessed the judicial reaffirmation of baseball's antitrust exemption[6] but the rejection of similar treatment for other professional sports.[7] The decade also saw the first controversial franchise relocations,[8] the demise of a rival football league,[9] the subsequent formation of a new competitor to the established football league,[10] and several attempts of leagues to explore arrangements to take advantage of the commercial potential of television.[11] Judicial and legislative forums were used to air the antitrust issues that were predominant in these events.

The 1960's saw sports broadcasting issues begin to rival antitrust concerns as public issues and both received receptive action by the Congress. The major sports leagues were granted an antitrust exemption to permit the pooled sales of sponsored television broadcasts to networks[12] and the warring football leagues were allowed to merge.[13] A similar dispensation was later denied for a proposed basketball merger. The decade also saw litigation and proposed legislation over the relocation of a baseball franchise.[14]

---

[6] Toolson v. New York Yankees, 346 U.S. 356 (1953).

[7] United States v. International Boxing Club, 348 U.S. 236 (1955); Radovich v. National Football League, 352 U.S. 445 (1957).

[8] The Brooklyn Dodgers and New York Giants, both successful financially, moved to Los Angeles and San Francisco.

[9] All America Football Conference.

[10] American Football League (1959).

[11] In 1959 the American Football League sold the television rights to its games as a package for the 1960 and 1961 seasons. Similar pooled sales had previously been entered into by the National Basketball Association and the National Hockey League. See Sobel, *supra* note 4, at 584.

[12] Pub. L. 87-331 (1961), codified at 15 U.S.C. 1291 (1982).

The 1970's brought the emergence of sports broadcasting issues as a major concern of the Congress[15] and labor relations strife as a significant focus of judicial attention.[16] The desertion of the nation's capitol's baseball franchise and the disruptions caused by inter-league disputes, and the aforementioned labor unrest, precipitated a major congressional inquiry.[17]

Finally, the present decade has thus far been dominated by concerns over franchise movements. Encouraged and abetted by eager municipalities, owners have challenged the assumed authority of leagues to control franchise locations. A federal court of appeals ruling declaring league restrictions on team relocations violative of the antitrust laws[18] appeared to signal the beginning of an era of uncontrolled team movements.[19] In response, the leagues and cast off cities have sought relief on Capitol Hill. They are opposed, of course, by localities hoping to become beneficiaries of the new free agency.

13/ Pub. L. 89-800, sec. 6(b)(1) (1966), codified at 15 U.S.C. 1291 (1982).

14/ *Wisconsin* v. *Milwaukee Braves*, 3 Wisc. 2d 699, 144 N.W. 2d 1 (1966).

15/ Sobel, *supra* note 4, at 596-606 (leagues could not blackout home games unless not sold out 72 hours in advance); 47 U.S.C. 331 (1976).

16/ Berry and Gould, *supra* note 1, 759-775.

17/ Pro Sports Study, *supra* note 1, at 27.

18/ *Los Angeles Memorial Coliseum Commission* v. *National Football League*, 726 F. 2d 1381 (9th Cir. 1984), *cert. denied*, 53 U.S.L.W. 3335 (U.S. Nov. 5, 1984) (*Raiders*).

19/ The Baltimore Colts removed to Indianapolis in March 1984. Moves have been threatened by the St. Louis Cardinals (football), Kansas City Kings (basketball), and the Philadelphia Eagles (football). See Kempf, The Missapplication

(continued)

But the latest quests for congressional assistance appear to differ significantly in their scope, substance and urgency from those of the past. In large part this may be explained by the fundamental importance and potential impact the franchise relocation decision is perceived to have by the sports industry. Past judicial decisions which have precipitated industry calls for congressional action have in fact been seen to require limited, if any, legislative relief. The application of the antitrust laws to the industry was accompanied by the judicial advisement that rule of reason rather than per se analysis of industry practices would be the norm.[20] This allowed for a case by case justification of questioned practices and the opportunity for internal industry adjustment or accommodation. That has in fact occurred with respect to disputes over player allocation restrictions which have been essentially resolved through the process of collective bargaining.[21] Where congressional intervention has been deemed necessary, the remedy has been carefully circumscribed.[22] The potential reach of the relocation decision, however, seems to the leagues to strike at the heart of their authority to control the critical entrepreneurial decisions that have allowed them to achieve their present financial and operational success. Thus a number of the bills now under consideration go far beyond the question of the power

---

(continued) of Antitrust Law to Professional Sports Leagues, 32 De Paul L. Rev. 625, 625-26 (1983). Several cities have been ardently wooing established teams. See Lancaster, Football-Hungry Cities Feign Cool But Hustle Hard To Get Pro Team, Wall St. Journal, March 29, 1984, p. 31.

[20] See, e.g., Mackey v. NFL, 543 F. 2d 606 (8th Cir. 1976); Raiders, supra note 18.

[21] Berry and Gould, supra note 1; McCormick, Baseball's Third Strike: The Triumph of Collective Bargaining in Baseball, 35 Vand. L. Rev. 1131 (1982).

[22] The 1961 antitrust exemption for pooled sales of sponsored telecasts and the 1966 exemption for the merger of the American Football League and the National Football League were expressly limited. See Sobel, supra note, at 381-393, 595.

of leagues to control team movement and would grant antitrust immunity for restrictive controls over members' actions that appear unrelated, or only indirectly related, to relocations.

Those bills that are limited to the relocation issue (or the portions of broader bills that address relocation) also raise significant legislative policy questions. These proposals range from schemes that would effectively vest ultimate decisional authority in the locality to those that would leave it with the individual leagues. All purport to establish objective decisional standards. Here, the weight to be given local fan and governmental interests becomes important.

This paper will attempt to provide a framework for evaluating the pending legislation. Part I will briefly describe the organizational and operational structure of professional sports leagues, with particular emphasis on the manner in which leagues attempt to restrict the ability of members to make certain individual business decisions, such as relocation, without the concurrence of a supermajority of the membership. Part II will trace the evolution of the Oakland Raiders' litigation. The Ninth Circuit's decision will be explained and the arguments in support of and against the court's critical ruling -- that the National Football League (NFL) was not a single entity for purposes of federal antitrust law -- will be presented. This part will conclude with a description of the immediate impact of the ruling, which has included actual and threatened team movements and the attempts of localities to retrieve runaway teams through eminent domain actions. In Part III the history of professional sports franchise movements will be traced in order to ascertain whether any discernible pattern may be identified. The asserted interests of localities in retaining professional franchises will be detailed.

As has been indicated, over the years Congress has been a regular recipient of requests for remedial action from almost every conceivable interested party affected by a league, court, team, player, union or federal, state or local govern-which Congress has disposed of them. Part V will describe and compare the approaches of the major relocation proposals now pending before the Congress and attempt to assess the foreseeable implications for present statutory and decisional law. The paper concludes with summary observations on the considerations that may be relevant for legislative action in this area.

I

Professional sport leagues are groups of franchise owners whose purpose is to provide sports entertainment by restricting competition and dividing markets among league members.[23] Each league is a voluntary organization which provides an institutional structure within which contests among the member teams can be arranged so as to determine a champion for each season. The nature of the product sold by such leagues has effectively determined the characteristics of their sales organizations. The product is an entertainment consisting of competing teams of relatively evenly matched aggregates of athletes in which the outcome of any particular contest is in reasonable doubt. To assure that the relative competitive equality between the teams is maintained, and that the unpredictability of the outcome of the games and their integrity remains unquestioned, a method of player allocation is established which limits interteam competition for players. The organization of a league is also designed to optimize the attraction and retention of investment capital necessary to finance its operations.

---

[23] This definition makes the leagues essentially cartels in antitrust terminology. Noll, The U.S. Team Sports Industry: An Introduction, in Government and the Sports Business (Noll, ed. 1974), 2 (Noll); Raiders, 726 F. 2d at 1389 ("Although the business interests of League members will often coincide with those of the NFL itself, that commonality of interest exists in every cartel."). A cartel has been defined "as an arrangement in which competing firms have substituted an agreement on price, output, or related matters for independent decisionmaking." Areeda and Turner, Antitrust Law, Vol. II, para. 405a (1978). "The machinery of cartelization includes sales quotas, exclusive sales agencies, price fixing committees, the denying of penalties for infractions, provisions for arbitration of disputes, investigative apparatus, customer allocation, geographical market division, and the like." Posner, Antitrust Law: An Economic Perspective (1977), 39. The acknowledgement of the cartel-like nature of leagues has no determinative legal significance. Courts have long recognized that professional sports leagues are unlike ordinary businesses and are unique in their basic structures. As a consequence it has been accepted that some restrictions on competition in business practices may be necessary in order to promote competition on the playing field. Such practices, which ordinarily would be deemed per se antitrust violation, have been evaluated by the less stringent rule of reason standard. Raiders, 726 F. 2d at 1390-92; Mackey v. NFL, 543 F. 2d 606, 619 (8th Cir. 1973); Flood v. Kuhn, 309 F. Supp. 793, 801 (S.D.N.Y. 1970); United States v. NFL, 116 F. Supp. 319, 3232-24 (E.D. Pa. 1953). See also, Pro Sports Study, supra note 1, at 5-9; Quirk, An Economic Analysis of Team Movements in Professional Sports, 38 Law and Contemp. Prob. 42, 43-47 (1973).

Based upon these apparent requirements, professional sports leagues have developed common patterns of organization and operation characterized by a restriction of competition and division of markets among the business entities composing the league. In brief summary they may be described as follows: (1) Each team in the league is assigned an exclusive franchise to conduct league contests within some specific geographic area, generally restricted to within a twenty-five to fifty or seventy-five mile radius about the team's playing field. (2) Collective bargaining agreements between a players union and the league delineate and limit the extent of individual player ability to sell his services to the highest bidder. (3) League rules specify the sharing of gate receipts between the home and visiting teams and prescribe the rights to proceeds from television and radio contracts as well. Under an antitrust exemption granted by the Congress specifically for this purpose, each of the major professional sprots leagues can also engage in pooling operations in negotiating nationwide television and radio contracts.[24/] (4) League rules specify drafting procedures based on reverse order of finish in the previous season, restricting bidding by league teams for new talent. (5) League rules govern the sale or transfer of franchises, the creations of new franchises, and the movement of franchises between geographical areas. These and other league rules are enforced by such sanctions as fines, blacklisting, expulsion, or the forced sale of a franchise.

[24/] See 15 U.S.C. 1291 (1982).

Despite these common purposes, league members maintain their individuality in many respects. Although a significant portion of league revenues are shared, profits and losses are not. The teams compete for management personnel and coaches. Each team sets its own ticket prices. Major league operational and financial decisions such as league expansion, permission for team relocations, ratification of collective bargaining agreements, and sale of television broadcast rights are subject to collective member approval, often by extraordinary majorities. Common league practices with respect to their most valuable resources -- rights in franchises, admission revenues, and broadcast revenues -- merit particular attention.

Franchises. Each league has rules governing the locations of teams in the league. Although rules vary between leagues, they generally prohibit a member team from locating in a city which already has a league team unless that team gives its permission. Often the prohibition will extend to a specified geographic area. Within the allotted franchise territory a team has the exclusive right to sell admissions to its games.

Leagues also control the movement of existing franchises to cities without teams. A team wishing to relocate must gain the approval of a substantial majority of the other teams.[25] Further, the entrance of new franchises is controlled by the established teams which require substantial entrance fees and dictate the location of the new team. If a new team infringes on the territorial rights of an established franchise it may be required to pay it an indemnity fee.[26/] As with the player allocation system, the exclusivity of franchise rights is threatened only by the emergence of interleague competition.

---

[25] See, e.g., National Football League Constitution, Article IV, Rule 4.3 (3/4's); National [Baseball] League Constitution, art. 3.2 (3/4's); National Basketball Association Constitution, sec. 7 (3/4's); National Hockey League Constitution sec. 4.2 (prohibiting transfers); North American Soccer League Constitution, sec. 3.6 (3/4's).

Admission revenues. Admissions receipts constitute one of the major sources of revenues for teams. Attendance potential differs from franchise to franchise and appears to be a factor in the divergent financial health between teams in any one league. Although sharing in order to equalize the disparities between teams with large and small attendance potentials has been suggested as a possible solution, no uniform pattern of gate sharing has emerged amongst the leagues. Gate sharing practices vary widely from sport to sport ranging from no split with the visiting teams in basketball and hockey, to an 80/20 and about 90/10 split in the American and National baseball leagues, respectively, to a 60/40 sharing by National Football League teams. The effect of the varying gate sharing policies on franchise viability and team performance has been the subject of considerable study and debate.[27/]

Broadcasting. Competition over television and radio broadcasting of professional sports contests is limited in two ways. First, the rights to national broadcasts of games in each sport are controlled by the league. This comes as a result of the exemption from the antitrust laws granted by Congress in 1961 which

---

[26/] See, e.g., Kempf, supra note 19, at 626 note 3 (Colorado Rockies required to pay $16 million to New York and Philadelphia National Hockey League teams for relinquishing their home territory rights in order to relocate to Rutherford, New Jersey).

[27/] Noll, Alternatives in Sports Policy, in Noll, supra note 23, at 416, 419-20.

allowed leagues to enter into pooling arrangement with networks to sell broadcast rights to their games. The revenues from these arrangements are shared equally among all teams in the league. Second, each team has exclusive rights to broadcast all home games that are not part of the league's national broadcasting package and to prevent the broadcast in its home territory of any game not in the package. This is true for all sports except football where the team can sell radio rights for all games and television rights for exhibition games. Since all teams either have local monopolies or compete with only one other team in its sport, these rules create a local monopoly in broadcasting that can, in some instances, be more important to a team than league arrangements for national telecast.

II.

The sports industry's restrictive practices have not fared well in the courts. With the exception of baseball,[28] all sports leagues have been found subject to federal antitrust laws.[29] In applying those laws to player allocation restrictions,

---

[28] Baseball's antitrust exemption was initially granted in Federal Baseball v. National League, 259 U.S. 200 (1922), reaffirmed in Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953), and reiterated, with apparent reluctance, in Flood v. Kuhn, 407 U.S. 258 (1972), where the Court conceded its Federal Baseball decision to be "an aberration" and "unrealistic, inconsistent and illogical", but nonetheless entitled to the benefit of stare decisis, in view of the sport's half century of reliance on the exemption and Congress' failure to act to take it away. For a discussion of this "anomaly", see Final Report, supra note 1, at 35-60.

[29] In United States v. International Boxing Club, 348 U.S. 236 (1955) (boxing); Radovich v. National Football League, 352 U.S. 445 (1957) (football); Deeson v. Professional Golfers Association of America, 358 F. 2d 165 (9th Cir.), cert. denied, 385 U.S. 846 (1966) (golf); Blalock v. Ladies Professional Association, 359 F. Supp. 1260 (N.D. Ga. 1973) (golf); Haywood v. National Basketball Association, 401 U.S. 1204 (Douglas, Circuit Justice, 1971) (basketball); Nassua Sports v. Peters, 352 F. Supp. 870 (E.D.N.Y. 1972) (hockey); Washington State Bowling Proprietors Association v. Pacific Lanes, Inc., 356 F. 2d 371 (9th Cir. 1966), cert. denied 384 U.S. 963 (1966) (bowling); Bridge Corp. of America v. American Contract Bridge League, Inc., 428 F. 2d 1365 (9th Cir. 1970) (bridge); National Wrestling

(continued)

the courts have been uniformly condemnatory.[30] The defense of restrictive practices with respect to marketing and franchising decisions and the disciplinary authority of commissioners over member clubs has been more successful. Thus the courts have upheld league decisions to deny transfers of club ownership,[31] to decline to add a new club,[32] to discipline club owners,[33] and to expand into other cities at a time of inter-league rivalry.[34] But efforts to prohibit league members from owning teams in other sports leagues[35] and to sequester players,[36] have been found unlawful. In another case, an appeals court overturned a jury verdict upholding a stadium lease agreement that prevented use of the facility by a potential rival to the NFL lessee.[37]

(continued) Alliance v. Myers, 325 F. 2d 768 (8th Cir. 1963) (wrestling); STP Corp. v. U.S. Auto Club, Inc., 286 F. Supp. 146 (S.D. Ind. 1968) (auto racing).

30/ See, e.g., Mackey v. NFL, 543 F. 2d 606 (8th Cir. 1976), modifying 407 F. Supp. 1000 (D. Minn. 1975) (Rozelle Rule); Bryant v. NFL, Docket No. CV-75-2543 (E.D. Calif. July 30, 1975) (TRO granted), order dissolved, id. (D.C. Calif. August 7, 1975) (Rozelle Rule); Smith v. Pro-Football, 420 F. Supp. 738 (D.D.C. 1976), modified, 593 F. 2d 1173 (D.C. Cir. 1978) (draft); Kapp v. NFL, 390 F. Supp. 73 (N.D. Calif. 1974) (Rozelle Rule, tampering rule); Robertson v. NBA 389 F. Supp. 867 (S.D.N.Y. 1975) (draft, reserve clause, uniform player contract); Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc. 351 F. Supp. 462 (E.D. Pa. 1972) (reserve clause).

31/ See Levin v. National Basketball Association, 385 F. Supp. 149, 150 (S.D.N.Y., 1974).

32/ See Mid-South Grizzlies v. National Football League, 550 F. Supp. 558, 561 (E.D. Pa. 1982), aff'd, 720 F. 2d 772 (3rd Cir. 1983).

33/ Charles O. Finley and Co. v. Kuhn, 569 F. 2d 527 (7th Cir.), cert. denied, 439 U.S. 876 (1978) (disapproval of trade upheld); Atlanta National League Baseball Club v. Kuhn, 432 F. Supp. 1213 (N.D. Ga. 1977) (transactions for tampering upheld).

34/ AFL v. NFL, 323 F. 2d 124 (4th Cir. 1963).

35/ NASL v. NFL, 670 F. 2d 1249 (2d Cir.), cert. denied, 103 S. Ct. 499 (1982).

36/ Robertson v. NBA, 404 F. Supp. 832 (S.D.N.Y. 1975); Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, 351 F. Supp. 462 (E.D. Pa. 1972).

37/ Hecht v. Pro-Football, Inc., 570 F. 2d 982 (4th Cir. 1977). The court found that the trial judge's instructions with respect to the relevant market, inference of intent to monopolize, the essential facilities doctrine, and the nature of an unreasonable restraint were incorrect, incomplete or misleading, and remanded the case for re-trial. The case was settled before a second trial.

The most recent, and most far reaching in terms of its impact on a league's ability to control significant entrepreneurial decisions of individual members, is Los Angeles Memorial Coliseum Commission v. National Football League (Raiders).[38/] There the Ninth Circuit affirmed a district court ruling finding the NFL's rule requiring that a club receive three-quarters approval by members of the League for a move into another team's home territory[39/] to be a violation of section 1 of the Sherman Antitrust Act.[40/] The facts of the case may be briefly recounted.[41/]

Following league approval of the Los Angeles Rams move to a new stadium in Anaheim, the Los Angeles Coliseum Commission, bereft of a tenant, inquired of the NFL whether an expansion club might soon be available. Not receiving a satisfactory reply, the Coliseum sued the NFL in order to obtain a declaration that the NFL's rule requiring unanimous consent before a team could be placed in another club's home territory[42/] to be an unlawful restraint of section 1 of the Sherman Act.

[38/] 726 F. 2d 1381 (9th Cir. 1984), cert. denied, 53 U.S.L.W. 3335 (U.S. Nov. 5, 1984). (Raiders).

[39/] Rule 4.3 of Article IV of the NFL Constitution states: "The League shall have exclusive control of the exhibition of football games by member clubs within the same territory of each member. No member club shall have the right to transfer its franchise or playing site to a different city, either within or outside its home territory, without prior approval by the affirmative vote of three-fourths of the existing member clubs of the League."

[40/] 15 U.S.C. 1 (1982). This section provides in pertinent part that: "Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal."

[41/] This account is essentially a summary of the courts statement of the case. Raiders, 726 F. 2d at 1384-1386. See also Weistart, League Control of Market Opportunities: A Perspective on Competition and Cooperation in the Sports Industry, 1984 Duke L. J. 1013, 1015-16 (Weistart).

[42/] Rule 4.1 defines home territory to be the area within "75 miles in every direction from the exterior corporate limits of such city." The Coliseum was thus still within the Rams "home territory" even though it now played Anaheim.

The suit was dismissed as premature since no team had as yet committed itself to move to Los Angeles. The NFL then changed its movement rule to require a three-quarters vote.

Soon thereafter, Al Davis, the Oakland Raiders' managing general partner, commenced negotiations with the Commission. The Raiders' lease with the Oakland Coliseum had expired and its requests for substantial improvements in the facility were not met. In March 1980 Davis and the Coliseum signed an agreement for the relocation of the Raiders to Los Angeles. Following the announcement of his intentions at an NFL meeting, the member teams voted 22-0 to deny Davis permission to move, with five teams abstaining. The Coliseum, joined by the Raiders, renewed its suit. The first trial resulted in a hung jury and mistrial in 1981. In a second trial, after the court concluded as a matter of law that the League was not a "single entity" but rather was made up of 28 separate businesses units exercising independent business judgments in significant areas of individual concern, the jury returned a verdict in favor of the plaintiffs on their antitrust claims and the court issued a permanent injunction against the NFL from any interference with the Raiders transfer. In a subsequent trial on the damages issue, the jury awarded the Raiders $11.55 million and the Coliseum $4.86 million, which after the statutory trebling, amounted to a total in excess of $49 million against the League. Both decisions were appealed.

The critical issue for the appeals court was the lower court's ruling on the single entity question. The NFL argued that a proper understanding of the league's structure and operations supported the view that it is "in essence a single entity, akin to a partnership or joint venture, precluding application of Sherman Act section 1 which prevents only contracts, combinations or conspiracies in restraint of trade."[43/] In support, the league urged that a realistic view of the nature

---

[43/] Raiders, 726 F. 2d at 1387.

of the league's structure and operation revealed that the teams do not compete economically and that the league imposes the restriction in question, as well as related ones, because the league is no more than the sum of its teams. At the heart of the argument, then, is the presumed economic interdependence of the league. Here the league emphasized that some 90% of all revenues were shared among the league's members. Also, it was argued that an important goal of the league was to insure that member clubs were relatively balanced in terms of their competitiveness on the athletic field. Dominance by one or a few clubs would substantially diminish the value of the clubs' television offering and reduce fan interest in live attendance. This need for balance in the clubs' athletic produce was urged as warranting an array of equalizing controls which renders the league an essentially cooperative venture. Thus, in the clubs' view, the league is much like a partnership or corporation, in that there is a collective concern for financial security that overrides individual predilections. Certainly no one club could go off on its own and stage profitable exhibitions. In light of such economic interdependence, it was urged, section 1 of the Sherman Act should be deemed inapplicable.

By a 2-1 vote, the panel rejected the single entity argument. At the core of the majority's ruling is its perception of the member clubs as a cooperative aggregate which has delegated decisionmaking functions regarding day-to-day matters such as scheduling, resolving disputes among players and franchises, supervising officials, and discipline and public relations, but which has retained control over key entrepreneurial issues.

In this regard the court pointed to the fact that each team is separately owned and operated with complete control over prices charged, marketing strategy, and the recruitment of management and coaching personnel. Also, the teams do not share profits and losses, a key indicia of singleness in other contexts.[44] Moreover, in the area in dispute, franchise location, the determination is not made by the league administration but instead by a vote of the individual teams. Each team has one vote in the process which may be cast in their own self interest rather than for the league's benefit. A relocation decision, then, in the court's view, is the result of individual actions of the league members, not the result of a unified league body. Finally, the court noted that except for one instance, all courts that had considered the single entity thesis either in the same or similar league operational context, had rejected it.[45] The salient portions of the majority's rationale on this issue follow.

> ...The facts make it clear the NFL does not fit within this exception. While the NFL clubs have certain common purposes, they do not operate as a single entity. NFL policies are not set by one individual or parent corporation, but by the separate teams acting jointly.
>
> It is true the NFL clubs must cooperate to a large extent in their endeavor in producing a "product" -- the NFL season culminating in the Super Bowl. The necessity that otherwise independent businesses cooperate has not, however, sufficed to preclude scrutiny under §1 of the Sherman Act. [citing Associated Press v. U.S. 726 U.S. 1 (1945)].
>
> . . .
>
> The case of United States v. Sealy, Inc., 388 U.S. 350, 87 S. Ct. 1847, 18 L. Ed. 2d 1238 (1967), is closely on point. Sealy

---

44/ See, e.g., Arizona v. Maricopa County Medical Center, 457 U.S. 332 (1982).

45/ NASL v. NFL, 670 F. 2d 1249, 1257-1259 (2d Cir.), cert. denied, 459 U.S. 1074 (1982); Smith v. Pro-Football, Inc., 593 F. 2d 1173 (D.C. Cir. 1978); Mackey

(continued)

licensed manufacturers to sell bedding products under the name and allocated territories to the licensees. The facts showed, however, that this arrangement was not vertical but horizontal; the 30 licensees, owning all of the stock of Sealy, controlled all its operations. 388 U.S. at 352-353, 87 S. Ct. at 1849-1850, 18 L. Ed. 2d at 1242. Describing the Sealy organization as a joint venture, the Court nonetheless found it a per se violation of the Sherman Act. See also United States v. Topco Associates, Inc., 405 U.S. 596, 609, 92 S. Ct. 1126, 1134, 31 L. Ed. 2d 515, 526 (1972) (Court finding a per se violation on facts similar to Sealy).

The NFL structure is very similar to that in Sealy. The League itself is only in very limited respects an identity separate from the individual teams. It is an unincorporated, not-for-profit, "association." It has a New York office run by the Commissioner, Pete Rozelle, who makes day-to-day decisions regarding League operations. Its primary functions are in the areas of scheduling, resolving disputes among players and franchises, supervising officials, discipline and public relations. The decision involved here on territorial divisions is made by the NFL Executive Committee which is comprised of representative of each club. Even though the individual clubs often act for the common good of the NFL, we must not lose sight of the purpose of the NFL as stated in Article I of its constitution, which is to "promote and foster the primary business of League members." Although the business interests of League members will often coincide with those of the NFL as an entity in itself, that commonality of interest exists in every cartel. As in

---

(continued) v. *NFL*, 390 F. Supp. 73 (N.D. Calif. 1974), *appeal vacated*, 586 F. 2d 644 (9th Cir. 1978), *cert. denied*, 441 U.S. 907 (1979). The exception was a district court decision in *San Francisco Seals, Ltd.* v. *NHL*, 379 F. Supp. 966 (C.D. Calif. 1974), which upheld the NHL's right to preclude a team's relocation. The majority opined that the *Seals* court rationale was not "so compelling that existing precedent can be ignored or that we should grant this association of 28 independent businesses blanket immunity from attack under section 1 of the Sherman Act." 726 F. 2d at 1390 note 4.

Sealy, we must look behind the label proffered by the defendants to determine the substance of the entity in question. 388 U.S. at 353, 87 S. Ct. at 1850, 18 L. Ed. 2d at 1242.

Our inquiry discloses an association of teams sufficiently independent and competitive with one another to warrant rule of reason scrutiny under §1 of the Sherman Act. The NFL clubs are, in the words of the district court, "separate business entities whose products have an independent value." 519 F. Supp. at 584. The member clubs are all independently owned. Most are corporations, some are partnerships, and apparently a few are sole proprietorships. Although a large portion of League revenue, approximately 90%, is divided equally among the teams, profits and losses are not shared, a feature common to partnerships or other "single entities." In fact, profits vary widely despite the sharing of revenue. The disparity in profits can be attributed to independent management policies regarding coaches, players, management personnel, ticket prices, concessions, luxury box seats, as well as franchise location, all of which contribute to fan support and other income sources.

In addition to being independent business entities, the NFL clubs do compete with one another off the field as well as on to acquire players, coaches, and management personnel. In certain areas of the country where two teams operate in close proximity, there is also competition for fan support, local television and local radio revenues, and media space.

These attributes operate to make each team an entity in large part distinct from the NFL. It is true that cooperation is necessary to produce a football game. However, as the district court concluded, this does not mean, "that each club can produce football games only as an NFL member." 519 F. Supp. at 584. This is especially evident in light of the emergence of the United States Football League.46/

46/ 726 F. 2d at 1389-1390.

Turning to the merits of the relocation rule, the court acknowledged that the league's concern for regional balance in the placement of franchises, the need for financial stability, and the value of maintaining local community support, were cognizable justifications under rule of reason analysis. But it found that, as applied, Rule 4.3 swept too broadly. In the majority's view, the league had less restrictive alternatives available to it for protecting its interests. The league should have used an objective standard that considered such factors as the adequacy of the population base in the new city, the suitability of the new playing facility, the effect of the move on the marketability of the league games on television, the effect on regional balance, and the weight of the effect of the move on fan loyalty, among others. The court stated:

> To withstand antitrust scrutiny, restrictions on team movement should be more closely tailored to serve the needs inherent in producing the NFL "product" and competing with other forms of entertainment. An express recognition and consideration of those objective factors espoused by the NFL as important, such as population, economic projections, facilities, regional balance, etc., would be well advised. See L. Kurlantzick, Thoughts on Professional Sports and the Antitrust Laws, 15 Conn. L.R. 183, 206 (1983). Fan loyalty and location continuity could also be considered. Id. at 206-207. Al Davis in fact testified that in 1978 he proposed that the League adopt a set of objective guidelines to govern team relocation rather than continuing to utilize a subjective voting procedure.
>
> Some sort of procedural mechanism to ensure consideration of all the above factors may also be necessary, including an opportunity for the team proposing the move to present the case. Id.; see Silver v. New York Stock Exchange 373 U.S. 341, 83 S. Ct. 1246, 10 L. Ed. 2d 389 (1963) (without procedural safeguards, the collective act of the Exchange in disconnecting the wire service to a broker constituted a boycott, per se illegal under §1); cf. Deesen v. Professional Golfers Ass'n, 358 F. 2d 165 (9th Cir.), cert. denied,

> 385 U.S. 846, 87 S. Ct. 72, 17 L. Ed. 2d 76 (1966) (where PGA had reasonable rules governing eligibility of players for tournaments, there was not a §1 violation). In the present case, for example, testimony indicated that some owners, as well as Commissioner Rozelle, dislike Al Davis and consider him a maverick. Their vote against the Raiders' move could have been motivated by animosity rather than business judgment.[47]

In sum, then, the court in the end did not rule out future league control of relocation decisions. It objected to a decisionmaking process that is subjective and amenable to arbitrary and inconsistent treatment. It was essentially calling for a minimal semblance of due process.

Judge Williams in dissent rejected what he called the "formalistic" view of the relationship between the league and its member club and emphasized the "significant interdependency of the member clubs and the indivisibility of the clubs with the NFL."[48] For Judge Williams the clubs do not compete in any economic sense. While the clubs may be functionally distinct, in fact "they cannot produce separate, individual goods and services absent coordination" and therefore "are inextricably bound in an economic sense, and must adopt certain intra-league instrumentalities to regulate" its product, football games.[49] The dissent concluded that the majority and the lower court failed to appreciate the realities of the league's operations:

> The paradox to which I return, as the root of why the NFL, as well as other sports leagues, must be regarded as a "single entity" is that the keener

---

[47] 726 F. 2d at 1397-1398.

[48] 726 F. 2d at 1404.

[49] 726 F. 2d at 1406.

the on-field competition becomes, the more successful their off-the-field, and ultimately legally relevant, collaboration. The formal entities, including the member clubs -- including the Raiders -- which the district court ruled to be competitors cannot compete, because the only product or service which is in their separate interests to produce can only result as a fruit of their joint efforts. This systemic cooperation trickles down to all members of the league, regardless of their on-the-field record, at least to the extent of the shared revenues. As at least one district court has previously recognized, despite some limited independently earned profit from "team paraphernalia" and "local broadcast revenues",

> (a) franchise's popularity is inextricably bound up with the quality of its competition on the playing field and the resulting excitement and sense of team loyalty.

Mid-South Grizzlies, supra, at 568. The ability to accrue separately accounted and disbursed profit, of which the district court made much, "is an indirect benefit of being a member of the league". Id.

A ruling that the NFL cannot enforce Rule 4.3 is effectively ruling that it may not enforce any collective decision of its member clubs over the dissent of a club member, although this is precisely what each owner has contractually bargained for in joining the enterprise. Without power to reach collective decisions, the NFL structure becomes superfluous, and professional sports, without a cost-effective policing mechanism such as the league, will dissolve in the face of uncontrollable free-riding and loss of economies of scale. Broadcast Music, Inc. v. Columbia Broadcast System, Inc. 441 U.S. 1, 99 S. Ct. 1551, 60 L. Ed. 2d 1 (1979).50/

50/ 726 F. 2d at 1406.

While the debate over the proper application of the single entity doctrine continues in the legal literature,[51] the *Raiders* decision has had a substantial immediate impact. On the strength of that ruling, the Baltimore Colts were emboldened to move to Indianapolis, and several other football, basketball and hockey teams have or are threatening to use the option opened by the decision to move to greener pastures.[52] Whether these are real threats or an attempt to use the leverage of the ruling to exact concessions from incumbent localities, these clubs can point to a number of eager, available, and apparently viable municipal suitors willing to accept a new club.[53]

---

[51] Contrast Weistart, *supra* note 41, condemning the *Raiders* majority opinion as an "[in]adequate explanation of how the inherently cooperative nature of a league venture is to be reconciled with the court's apparent desire to promote competition among league clubs," with Click, Professional Sports Franchise Movements and the Sherman Act: When and Where Teams Should be Able To Move, 23 *Santa Clara L. Rev.* 55 (1983) contending that "existing rules are unreasonable because they are subjective, arbitrary and inconsistently enforced."

[52] See threatened moves noted *supra*, note 19. In addition, the relocation of the San Diego Clippers to Los Angeles is being challenged in court, see *NBA* v. *SDC Basketball Club, Inc*., No. 84-1430-B (CM) (S.D. Cal. 1984), and the denial of a request to relocate the St. Louis Blues to Saskatchewan by the National Hockey League is the subject of litigation. The league located a new owner committed to keeping the team in St. Louis and is now defending itself against a $60 million antitrust claim brought by the previous owner. See, *Ralston Purina Co*. v. *NHL*, No. 83-1264-C(3) (E.D. Mo. 1983).

[53] See Lancaster, *supra* note 19.

Another fallout of the Raiders' litigation has been the aggressive stance taken by localities losing franchises. Both Oakland[54] and Baltimore[55] are presently pursuing their lost teams in state court eminent domain proceedings. Both the outcomes and efficacy of this type of litigation are uncertain.[56]

---

[54] When the Raiders announced their intention to leave Oakland, the city commenced an eminent domain action. The Raiders prevailed at the trial level on their arguments that in California eminent domain could not be used to take intangible property and that, in any event, the taking of a sports franchise was not a proper public use. On appeal the California Supreme Court reversed, holding that the taking of intangible porperty was authorized by state law. City of Oakland v. Oakland Raiders, 32 Cal. 3d 60, 646 P. 2d 835 (1982). The court remanded the case for further trial on the public use issue. On remand, the trial court again dismissed the complaint funding no public use. An intermediate appellate court reversed. City of Oakland v. Superior Court of Monterey County, 150 Cal. App. 267, 197 Cal. Rptr. 729 (1983). On the third go around in the trial court, the suit was again dismissed, this time on the grounds that the City's attempted use of its eminent domain authority was arbitrary, capricious and a gross abuse of discretion, and also placed an impermissible burden on interstate commerce and the right to travel. City of Oakland v. Oakland Raiders, No. 76044, slip opinion at 15 (Cal. Ct. app. July 16, 1984). That ruling is now on appeal.

[55] In early 1984 the Colts were negotiating a new lease arrangement with the City of Baltimore and at the same time were dickering with the cities of Phoenix and Indianapolis. On March 27, 1984 the owner of the Colts learned that the Maryland Senate had passed a bill granting Baltimore the power to acquire the Colts by eminent domain. The deal with operators of the Indianapolis Hoosier Dome was quickly consummated and "the Colts fled Baltimore under the cloak of darkness; eight moving vans full of Colts equipment arrived in Indianapolis on March 29." Indianapolis Colts v. Mayor and City Council, 741 F. 2d 954, 955 (7th Cir. 1984), cert. denied 53 U.S.L.W. 3668 (1985). On March 29 the condemnation bill was signed into law and on March 30 Baltimore filed suit in Maryland state court which issued a restraining order against the Colts from transferring any element of the team from Baltimore. In response, the Colts caused the removal of the action to federal district court in Maryland, and thereafter filed an action in federal district court in Indiana claiming that their obligations under its lease with Hoosier Dome authority conflicted with Baltimore's attempts to acquire the team through eminent domain and requested that the eminent domain action be enjoined. The district court granted the restraining order but on appeal, a panel of the Seventh Circuit Court of Appeals reversed. Inter alia, the court revealed that there is an escape clause in the Colts new lease which would permit them to return to Baltimore if the condemnation should be successful. 741 F. 2d at 957-58. The case now awaits disposition in the Maryland district court.

[56] For opposing views of the efficacy of eminent domain actions as a means of resolving relocation issues, compare, Comment, City of Oakland v. Oakland Raiders:

(continued)

III

Professional sports team relocations are not a phenomenon of the 1980's. One study has shown that since 1950 there have been 68 franchise moves in baseball, football, basketball and hockey, 37 of which have taken place since 1970.[57] If franchises that have simply gone out of business are included,

---

56/ (cont'd) Defining the Parameters of Limitless Power, 1983 Utah L. Rev. 397 (1983) ("Raiders decision ignores traditional eminent domain analysis") with Note, Anticipating on Instant Replay, City of Oakland v. Oakland Raiders, 17 Univ. of Cal. Davis L. Rev. 963 (1984) ("Public recreation is a legitimate basis for using eminent domain.")

57/ Johnson, Municipal Administration and the Sports Franchise Relocation Issue, Pub. Adm. Rev., Nov. - Dec. 1983, 519, 520. A breakdown of the team movements by league since 1950 is as follows:

1. Baseball (11); 1953 - Boston to Milwaukee (Braves); 1954 - St. Louis (Browns) to Baltimore; 1955 - Philadelphia to Kansas City (Athletics); 1958 - Brooklyn to Los Angeles (Dodgers); 1958 - New York to San Francisco (Giants); 1961 - Washington (Senators) to Minnesota (Twins); 1966 - Milwaukee to Atlanta (Braves); 1966 - Los Angeles to Anaheim (Angels); 1968 - Kansas City to Oakland (Athletics); 1970 - Seattle (Pilots to Milwaukee (Brewers); 1972 - Washington (Senators) to Arlington, Texas (Rangers).

2. Football (15): - 1952 - Brooklyn to Dallas; 1953 - Dallas (Texans) to Baltimore (Colts); 1960 - Chicago to St. Louis (Cardinals); 1961 - Los Angeles to San Diego (Chargers); 1963 - Dallas (Texans) to Kansas City (Chiefs); 1971 - Boston to Foxboro, Mass. (Patriots); 1971 - Dallas to Irvine (Cowboys); 1973 - Buffalo to Orchard Park (Bills); 1975 - Detroit to Pontiac, Mich. (Lions); 1976 - New York to Rutherford, N.J. (Giants); 1980 - Los Angeles to Anaheim (Rams); 1982 - Bloomington to Minneapolis (Vikings); 1982 - Oakland to Los Angeles (Raiders); 1984 - New York to Rutherford, N.J. (Jets); 1984 - Baltimore to Indianapolis (Colts).

the total rises to 60 franchises that have been lost to communities since 1970.[58] Thus the issue of franchise relocation is a matter of particular

---

57/ (cont'd)

3. Basketball (28): Since 1950 there have been 28 shifts in pro basketball: 1952 - Tri-Cities to Milwaukee (Blackhawks); 1956 - Milwaukee (Blackhawks) to St. Louis (Hawks); 1958 - Ft. Wayne to Detroit (Pistons); 1958 - Rochester to Cincinnati (Royals); 1961 - Minneapolis to Los Angeles (Lakers); 1963 - Philadelphia to San Francisco (Warriors); 1964 - Chicago (Zephyrs) to Baltimore (Bullets); 1964 - Syracuse (Nationals) to Philadelphia (76er's); 1969 - St. Louis to Atlanta (Hawks); 1969 - Anaheim (Amigos) to Los Angeles (Stars); 1969 - Teaneck, N.J. (Americans to Commach, L.I. (Nets); 1969 - Minneapolis (Muskies) to Washington (Caps); 1970 - Houston (Mavericks) to Charlotte (Cougars); 1970 - Minneapolis (Muskies) to Pittsburgh (Pipers); 1971 - New Orleans (Buccaneers) to Memphis (Pro's); 1971 - Los Angeles to Salt Lake City (Stars); 1971 - Washington (Caps) to Norfolk (Squires); 1972 - San Diego to Houston (Rockets); 1973 - Cincinnati (Royals) to Kansas City (Kings); 1974 - Baltimore to Landover, Md. (Bullets); 1975 - Charlotte (Cougars) to St. Louis (Stars); 1976 - Memphis (Tams) to Baltimore (Claws); 1978 - Commach L.I. to Rutgers, N.J. (Nets); 1979 - Buffalo (Braves) to San Diego (Clippers); 1980 - New Orleans to Salt Lake City (Jazz); 1983 - San Diego to Los Angeles (Clippers).

4. Hockey (14): 1973 - Philadelphia to Vancouver (Blazers); 1973 - Ottawa (Nationals) to Toronto (Toros); 1973 - New York (Raiders) to Cherry Hill, N.J. (Knights); 1973 - Boston to Hartford (Whalers); 1974 - Detroit (Stags) to Baltimore (Blades); 1974 - Cherry Hill (Knights) to San Diego (Mariners); 1975 - Denver to Ottawa (67's); 1975 - Oakland (Seals) to Cleveland (Barons); 1975 - Kansas City (Scouts) to Denver (Rockies); 1976 - Cleveland (Barons) to Minneapolis (North Stars); 1976 - Toronto (Toros) to Birmingham (Bulls); 1978 - Houston (Aeros) to Winnepeg (Jets); 1980 - Atlanta to Calgary (Flames); 1982 - Denver (Rockies) to Rutherford, N.J. (Devils).

[58] *Id.*

significance to the 42 cities currently hosting teams of the four major leagues and to the many communities eager to obtain one.

There is a mystique about retaining or obtaining a professional sports team that appears to drive cities to all lengths to have one. Professional franchises are claimed to bestow "major league" status, generate revenue and jobs, contribute significantly to civic pride, and often enhance local economic development.[59] Thus communities have long been willing to make substantial investment of taxpayers dollars to construct and maintain playing facilities and provide ancilliary services to attract or retain such franchises.[60] One report has estimated that at least 50 state and local governments have spent more than $6 billion in the past 20 years to entice or keep professional baseball and football teams alone.[61] Moreover, many communities are committing themselves to building playing facilities in the hope of attracting a team, apparently seeking to emulate the success of Indianapolis whose Hoosier Dome was planned and constructed without any firm team commitment.[62]

The types of action and efforts a city may take to keep or attract a professional sports franchise appear almost unlimted. The testimony of the

---

[59] S. Rept. No. 592, 98th Cong., 2d Sess. (1984), 2.

[60] See, e.g., Final Report, *supra* note 1, at 9 - 10.

[61] Alm, Sport Stadiums: Is the U.S. Overdoing It?, U.S. News & World Report, May 21, 1984, at 51 - 52.

[62] St. Petersburg, Florida, reportedly has plans to build a 43,000 seat baseball stadium and Buffalo, New York, is in the process of constructing a $90 million baseball stadium. Neither has any commitment for a team, Alm, *supra*, note 61.

Buffalo city attorney before one congressional committee details the extraordinary efforts that city's government expended over a period of years to attract and then keep professional sports teams.[63/] Despite the City's largess, it was only by threat of antitrust suit that it was able to forestall, but only temporarily, the move of its NBA franchise.

Neither the utilization of public funds and facilities to entice, nor resort to the courts to enjoin the movement of professional franchises, is uncommon. Public funds in the past have been used to build new stadia and arenas, refurbish old facilities, provide access roads and sewer and water facilities, provide conveniently located public lands, grant a variety of tax concessions, and the like. One of the more interesting inducements of recent times was the purchase by the City of Arlington, Texas, of the local broadcasting rights for 10 years of the soon to become Texas Rangers from Mr. Robert Short for $7.5 million. This was of course in addition to the normal agreement in such cases by which the city agreed to enlarge the local stadium at public expense and to provide a long term lease at most advantageous terms to the team. It remained with the city to syndicate the broadcast of Ranger games, a matter which proved so costly that it has been estimated that the city lost almost $3 million over the 10-year period. It has also been estimated that the total loss to the city over a 30-year period will be over $21 million, a cost which will be borne by the taxpayers of the city.[63a/]

[63/] Hearings Before the House Select Committee on Professional Sports, 94th Cong., 2d Sess., Part I, at 507-517 (1976)(Sports Hearings).

[63a/] Final Report, *supra* note 1, at 162-63.

The resort to litigation has also proved successful for some cities. In addition to the above-mentioned Buffalo and San Francisco cases, Seattle and Milwaukee filed antitrust suits following the transfer of local baseball franchises. Seattle's suit was settled by the award of an expansion team in 1977 at a price equal to that paid for the original franchise in 1967.[64] Although Milwaukee lost its suit,[65] public outcry forced the transfer of the old Seattle franchise to that city in 1969.

There seems little doubt that a city derives economic benefits from a team's presence, although it is unclear exactly how great these benefits are. Testimony after the Colts move estimated that their presence had generated between $20 and $30 million in economic activity, not only to the city but also throughout the state each year. Each Colt game brought employment to specific groups including the young, the retired, the unskilled and to those on social security who depended upon the extra income. The loss of the Colts hurt the local hotel and restaurant industries, the suppliers of concessions, and caused a loss of state and local taxes.[66] Similar claims have been made by different localities over the years. The Chamber of Commerce of San Francisco once estimated that the San Francisco Giants baseball team generated $326,860,000 as a direct result of its presence in the Bay area.[67] It is possible that in some cities the public costs attendant to a franchise's presence outweigh its benefits. Since no comprehensive cost-benefit analysis has ever been done in any city, there can be no real certainty to any economic value placed on the presence or absence of a team.[68]

---

[64] Sports Hearings, Part 2 at 425.

[65] Wisconsin v. Milwaukee Braves, Inc., 3 Wisc. 2d 699, 144 NW. 2d 201, cert denied 385 U.S. 990 (1966); Noll, supra, note, at 44.

[66] Professional Sports Team Protection Act: Hearings on S. 2505 Before the Senate Committee on Commerce, Service and Transportation, 98th Cong., 2d Sess. 38 (1984) (Statement of Hon. William Donald Shaeffer).

If there is some uncertainty over the real value of a franchise to a community, there seems to be less question about the benefits that accrue to the moving team. While many relocations can be attributed to financial losses of the team owner, since the 1958 moves of the Brooklyn Dodgers and New York Giants to the West Coast, financial distress can no longer be said to be a necessary justification for such moves. A study of baseball franchise moves over a 20 year period concluded that "(1) franchise moves have been approved without substantial opposition by other owners; (2) the justification for moves of 'lack of fan support' is in most cases of dubious validity; (3) franchise moves have not had the effect of more evenly balancing revenue within the league; (4) the assignment of all local TV revenues to the home team has been an important element in roughly half of the moves; (5) the moves have not been particularly successful in terms of long-run mobility at the new locations."[69] Many of these findings appear validated by recent football franchise movements. Approval without opposition of the moves of Los Angeles to Anaheim, and two

---

[67] Final Report, supra note 1, at 9-10.

[68] Johnson, supra note 57, at 524.

[69] Quirk, An Economic Analysis of Team Movements In Professional Sports, 38 Law & Contemp. Prob. 42, 60 (1973).

New York teams to Rutherford, New Jersey, could not be justified by lack of fan support and would not have had an appreciable effect on revenue distribution in the league. The refusal of permission to move to Al Davis appears on a par with the similar refusals to baseball "mavericks" Bill Veeck and Charley O. Finley. [70] But also significantly, Davis' move in the face of 12 straight years of sell out games indicates forcefully that community loyalty is not a persuasive or inhibitory factor in team moves. A student of the franchise movement issue has concluded that the combination of a prevalent sellers market and league rules that enforce and take advantage of franchise scarcity promise continued franchise instability:

> The control of the number and location of franchises has given sports entrepreneurs leverage to exact concessions from those cities desirous of attracting a franchise as well as from those desperate to retain an existing franchise. The leagues' conscious control of the number of franchises partly explains the fact that the demand by communities for sports franchises outstrips their supply. The imbalance of supply and demand leads cities to escalate their offers of publicly funded inducements in an attempt to outbid one another for franchises. This increases the public subsidy required to attract and retain a sports franchise, and presumably contributes to the instability of franchise location. [71]

---

[70] *Id.* at 50-51.

[71] Johnson, *supra* note 57, at 522.

IV

Since 1950, well over 300 pieces of sports legislation have been proposed and considered by the Congress.[72] The nature of those legislative proposals has closely reflected the turbulent events that reshaped the sports industry over the last three decades.[73] While the time and attention given to professional sports in committee deliberations and floor debates have been translated into relatively few pieces of legislation, much may be learned from congressional action and inaction with respect to sports industry issues. Thus despite a growing sense of the essential business nature of professional sports, an "idyllic image" of sports has persisted in the Congress, at least to the extent that it has given a sympathetic ear when a court ruling, administrative action or labor upset has disrupted the normal rhythm of the leagues.[74] The Raiders decision appears to have piqued more than the usual interest in the legislators, perhaps because the relocation question touches the interests not only of league owners and officials but also that of local governments, and identifiable segments of fans. It may be useful then to review the areas in which the federal interest has intersected with issues that implicate the sports industry in order to judge to what extent team movement may be a matter for serious consideration by the Congress.

---

[72] Johnson, Congress and Professional Sports, 445 Annals 102 (Sept. 1979).

[73] See discussion supra, at pp. 1-5.

[74] Johnson, supra, note 72, at 103, 109-111.

Professional sports activities touch upon, directly or indirectly, numerous points of major federal concern. Most prominent of late is federal antitrust policy. This comes about as a result of the nature of the organization of professional sports leagues. As stated above, a sports league is composed of independent competing businesses which agree to act collectively to produce a saleable entertainment. Such collective action by all competing businesses in an industry is also known as a cartel and violates Federal law when its exclusive power is improperly used to someone's detriment.[75/] In the past, Congress has granted limited exemptions from antitrust liability to enable the merger of competing sports leagues[76/] and to allow sports leagues to enter into television pooling agreements with broadcasters.[77/] In one instance the Supreme Court accorded an antitrust exemption to baseball,[78/] a privilege it has since refused to bestow on any other professional sport.[79/] Also, since 1951, Congress on numerous occasions has considered proposals that have ranged from granting blanket immunity from the antitrust laws to all sports to subjecting all aspects of all sports to

---

75/ 15 U.S.C. 1, 2, (1982). For a discussion of the term cartel, see supra, note 23.

76/ 15 U.S.C. 1291 (1982).

77/ Public Law 87-331, 75 Stat. 732 (1961), 15 U.S.C. 1291-95 (1982).

78/ Federal Baseball Club v. National League, 259 U.S. 200 (1922).

79/ See supra, note 29.

those laws.[80] But in one instance Congress refused to sanction the merger of the American Basketball Association (ABA) with the National Basketball Association (NBA).[81]

Successful utilization of the tax laws has been pointed to as a key factor in the economic viability of major league clubs and as a significant impetus to league expansions and franchise sales and movement.[82] Among the tax provisions most beneficial to owners are those allowing depreciation of player contracts,[83] capital gains,[84] carryover losses,[85] and the formation of Subchapter S corporations.[86] Players too have benefitted from favorable tax treatment of deferred income[87] capital gains,[88] and through income averaging,[89] income splitting,[90] and other tax saving devices.

---

[80] In Flood v. Kuhn, 407 U.S. 258, 281 n. 17 (1972), the Court catalogued numerous examples of inconclusive legislative deliberations.

[81] S. 2373, reported out of the Senate Subcommittee on Antitrust and Monopoly on Sept. 18, 1972, following hearings held throughout 1971 and 1972.

[82] See, e.g., Koppett, Sports and the Law: An Overview, 18 N.Y. Law Forum 815, 826 (1973).

[83] Internal Revenue Code, sec. 167(a).

[84] Internal Revenue Code secs. 1201, 1202.

[85] Internal Revenue Code, secs. 1211, 1212.

[86] Internal Revenue Code, secs. 1371-1379.

[87] Internal Revenue Code, secs. 404, 1348(b)(1), 83(c)(1).

[88] Internal Revenue Code, secs. 1201(b), 1348(b), 56(a).

[89] Internal Revenue Code, sec. 1301 et seq.

[90] Hundley, Jr., 48 TC 339 (1958).

The rapid development of trade unionism in major league sports has been in no small measure aided by the federal labor laws. All four major sports have active player associations which have utilized the National Labor Relations Board to obtain certifications as the exclusive bargaining representative of their players[91] or for redress of unfair labor practices,[92] and have used the Federal Mediation and Conciliation Service during breakdowns in collective bargaining negotiations.[93] Labor relations strife in the sports world has seen several strikes and lockouts take place in recent years, causing irretrievable losses of scheduled contests, and the expiration of collective bargaining agreements without renewal.[94] The failure to negotiate new agreements, in addition to placing in limbo useful arrangements for peaceful resolution of disputes such as contractual grievance and arbitration procedures, places in jeopardy players pension funds which are funded exclusively by employer contributions.[95] On the other hand, the statutorily mandated process of collective bargaining directly resulted in the abolition of the reserve clause in baseball[96] and has provided a means for accommodation in other sports through the cloak of antitrust immunity that bargained for provisions may afford.[97]

---

[91] The National Football League Players Association and the North American Soccer Players Association have N.L.R.B. certification. Jurisdiction over Baseball was established in a case involving umpires, American League of Professional Baseball Clubs and Association of National Baseball League Players, 180 N.L.R.B. No. 30 (1969).

[92] See, e.g., National Football League Management Council and National Football League Players Association, Case No. 2-CA-13379, decided June 30, 1976, per Schneider, Chief Administrative Law Judge.

[93] W.J. Usery, Jr., former Director of the Federal Mediation and Conciliation Service, attempted to mediate the September 1975 impasse in football negotiations. Oversight Hearings on National Football League Labor-Management Dispute, Subcommittee on Labor-Management Relations, House Committee on Education and Labor, 94th Cong., 1st sess., pp. 36-37 (1975).

[94] See *supra*, note 3.

[95] A threat to disrupt the 1976 baseball All-Star game was settled by the owners agreement to make its annual contribution to the players pension fund.

Immigration policy has become a prominent point of concern because of the annual influx of Canadian and European hockey players to staff National Hockey League (NHL) teams and their minor league affiliates in the United States, and the hundreds of baseball players from Carribean and Latin-American countries to play in the major and minor leagues. Under 8 U.S.C. 1182(a)(14) the Secretary of Labor issues entrance certificates to the players. The situation is particularly acute in hockey where, while the great majority of NHL teams are based in American cities, some 90% of the players are foreign citizens.[98]

Another point of significant federal contact with sports involves the national communications policy. Revenue from television and radio contracts accounts for approximately 25 percent of baseball's annual income and about 50 percent of that of football.[99] It may be expected that the National Basketball

---

[96] McCormick, Baseball's Third Strike: The Triumph of Collective Bargaining in Baseball, 35 _Vand. L. Rev_. 1131 (1982).

[97] Berry & Gould, _supra_, note 1.

[98] For ten years prior to the 1975 playing seasons the Department of Labor had issued blanket certifications to baseball and hockey. It was discovered about that time that certain personnel peripheral to the players were gaining entrance under the blanket policy. As a result the Labor Department now issues certificates on an individual basis. This has allegedly caused processing delays. In addition, the Department had questioned in the case of hockey the necessity (in the face of claimed inadequate United States citizen counterparts) of foreign officials, coaches and trainers.

[99] Statement of Bowie K. Kuhn Commissioner of Baseball, Before the Senate Finance Committee, Mar. 24, 1976, Table III.

Association's revenue figures are comparable to that of baseball. On the other hand, the failure of the World Football League and the American Basketball Association to procure comparable television agreements has been speculated to be a significant factor in the failure of those leagues. A professional sports' leagues' ability to enter into such lucrative television arrangements is the direct result of Congress' action in exempting pooling agreements from the anti-trust laws in 1961.[100/]

At one time Congress authorized the FCC to regulate certain aspects of sports broadcasting. In 1973 it enacted Public Law 93-107 which prohibited local blackouts of network games which were sold out 72 hours in advance. The legislation was allowed to expire at the end of 1975. Currently, FCC regulations limit the importation of distant sports signals by cable television systems.[101/]

One commentator attempting to discern some pattern to the foregoing legislative actions and inactions speculated that an issue which implicates the public right to access to sports might catch the attention of the Congress.

> The general public appears to be without effective representation when Congress considers matters related to professional sport, with the exception of public viewing rights. However, due to the great amount of interest in professional sports in America, Congress has developed

---

[100/] 15 U.S.C. 1291 (1982).

[101/] 47 C.F.R. 76.67 (1983). See generally, Garrett and Hochberg, Sports Broadcasting and the Law, 59 Ind. L.J. 155 (1984).

> a logic designed to be protective of the public's right to view sports. The public policy rationale for a right to access is dependent upon the revenue producing usage of public facilities and resources by sports teams and the belief that Congressionally granted antitrust exemptions have allowed professional sports clubs to reap large profits. Due to the relatively new perception of professional sports as big business, Congress appears to be ready to demand a formal quid pro quo.
>
> The professional sports industry is the only American industry which enjoys antitrust exemptions without related oversight. Although there have been threats to impose formal government regulations upon professional sports, such is unlikely due to general public opposition, the durability of the idyllic view of sports in Congress, and the political power of club owners and league administrators. It may be ironic, but not surprising, that if government regulation of sports is forthcoming, it probably will be imposed in the name of the opponent to government regulation of sports — the sports fan. 102/

Perhaps the relocation issue will see the confluence of congressional concern for the fan and the demise of its "idyllic" view of professional sports.

102/ Johnson, *supra*, note 72, at 115 (footnote omitted).

V

The Oakland Raider litigation has made relocation the legislative theme of the 1980's. In 1980 Senator Magnuson introduced legislation that became the prototype for the restrictive variety of team movement proposals.[103] Under his bill a team would be prohibited from relocating unless it gave the locality one year's advance notice and showed that (1) any party to a stadium lease agreement materially failed to comply with the provisions of the lease; or (2) the stadium in which the team plays is inadequate and stadium authorities evidence no intent to remedy the inadequacies; or (3) the team has incurred a continuous loss of income for the three preceding years. The bill also required the current team owner to offer the team to persons who would keep it in its present location. In contrast, an NFL-supported bill would have defined sports leagues as "de facto single economic entities," thereby insulating its relocation rule and other league actions from the type of antitrust challenge presented in the Raiders litigation. Under the bill, S. 2784, sports leagues would have been allowed to protect community interests against ownership relocation decisions but would have permitted league decisions approving relocation. Both bills failed of passage but they have set the pattern for the widely divergent proposals that have been introduced since then. Some would ban relocations totally; others go to the opposite extreme and would allow relocation without restriction but would require unlimited league entry.[104] Other bills are more difficult to categorize because they range well beyond the confines of the relocation issue. This part will describe and discuss the legal implications of the major proposals introduced thus far in the 99th Congress.

---

[103] S. 3183, 96th Cong., 2d Sess. (1980).

[104] See Johnson, supra note 72 at 524.

The bill which has thusfar advanced the furthest is S. 259, introduced by Senator Eagleton, which was ordered reported by the Senate Commerce, Science, and Transportation Committee on April 2, 1985 in a substantially revised form. At the heart of the proposal are four broad antitrust exemptions: leagues would be allowed to enforce rules (1) preventing a team move,[105] (2) imposing revenue sharing,[106] (3) establishing procedures and standards for the selection of owners of member clubs,[107] and (4) establishing procedures and standards for the termination of the ownership of member clubs.[108]

Exemption (1), covering league decisions on relocations, must be read in conjunction with the procedures established elsewhere in the bill. An owner seeking to move must give notice to the league, the stadium authority, and the local government. The notice must contain the owner's justification for removal based on factors made relevant elsewhere in the statute. The league must then conduct a hearing at which "interested parties" may present oral and written testimony. Interested parties are limited to representatives of the local government in which the club's playing facility is presently located, the club seeking to relocate, the playing facility owner or operator, and any other affected party "as so designated" by the league holding the hearing.[109] The league must render a decision within three months of receiving the notice.[110] The league's determination must be based upon twelve specified criteria which must be considered and upon which written findings must be made.[111] The league may also consider "such other factors as may be appropriate."[112] No weights are assigned to the listed factors. The league's determination to deny relocation is subject to judicial review by a federal district court which is neither in the state of the home territory of the moving club or the state to which it proposes to move. The court may set aside the league determination only if it finds that it is not supported by substantial evidence on the record taken as a whole, or was obtained by corruption, fraud or undue means. If the league is to permit a move, the stadium authority and the local government have a choice of seeking review under the above route or of filing an antitrust action.[113/]

---

[105] Section 4(1).

[106] Section 4(2).

[107] Section 4(3).

[108] Section 4(4).

[109] Section 3(2).

[110] Section 5.

---

[111] Section 6(b). The criteria are: (1) the adequacy of such member club's existing stadium or arena in relation to other stadiums or arenas within such league; (2) the adequacy of facilities related to or in the vicinity of such stadium or arena, including transportation, vending, retail and other facilities; (3) the desire and ability of the owner or operator of such stadium, arena or facilities and officials of local government to remedy any inadequacies in such stadium, arena or facilities, or to provide other incentives or arrangements which would make it reasonable and appropriate for such member club to continue to be located in its home territory; (4) the extent to which such member club has, directly or indirectly, received public financial support by means of construction of any publicly financed playing facility, special tax treatment, or other form of public financial support, and the extent to which such support continues or remains unamortized; (5) the effects of such change on any contract or agreement entered into by such member club and any public or private party; (6) the extent to which ownership or management of such member club has contributed to any circumstance that might demonstrate the need for a change in the member club's home territory; (7) the amount of such member club's operating revenues from sports operations, including net revenues from ticket and other stadium or arena receipts from games played in the member club's stadium or arena, in relation to the median and average levels or revenues for other member clubs in the three seasons preceding the date of the member club's notice furnished under section 5 of this Act; (8) the extent of any net operating losses experienced by such member club, exclusive of depreciation and amortization, in the three seasons preceding the date of the member club's notice furnished under section 5 of this Act; (9) the extent to which fan support for such member club has been demonstrated by attendance, ticket sales, and other factors while the member club has played in its home territory; (10) the number of professional, university, and college teams playing the same sport as the member club which are currently conducting sports operations in the member club's home territory and in the proposed location of such member club, and the effects that the proposed change in the location of such member club may have on such teams and their leagues; (11) any bona fide offer to purchase such member club at fair market value, if such offer includes continued location of such member club in its home territory; (12) the extent to which such member club has engaged in good faith negotiations concerning reasonable arrangements under which such member club would continue to be located in its home territory and in its stadium or arena (or a suitable alternative facility in its home territory).

[112] Section 6(b)(13).

The proposal therefore establishes a two-way street. Where a league denies a move, appeal is limited to a district court's substantial evidence review, a standard normally associated with review of administrative agency adjudicatory decisions. Under that standard a determination will be upheld where there is some factual basis in the record on review.[114/] It is normally a highly deferential standard. Since the hearing is to be conducted by the league, it is likely that the record will contain substantiating factual material. Where permission to move is granted, suit may be filed by the losing locality or stadium authority under the aforementioned review provision or an antitrust suit could be instituted. In view of the procedures established by the proposed statute, however, the likelihood of success of an antitrust action may be diminished in light of the Raiders court's announced approval of the use of objective criteria coupled with a procedural mechanism to assure consideration of these objective factors.[115/] Finally, the unusual venue provision may be noted.[116/] It appears to be designed to reverse the Raiders case ruling that allowed the trial to proceed in a Los Angeles

---

[113/] Section 7.

[114/] Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951).

[115/] Raiders, 726 F. 2d at 1397-98.

[116/] Section 7(b)(1).

court. We are not aware of a similar provision.

With regard to the second exemption, for revenue sharing, it would appear broad enough to cloak a variety of restrictive league activities. Certainly it would cover a rule that prevented a member club from refusing to join a sponsored TV pooling agreement, which would not appear possible now under the section 1291 exemption which simply allows leagues to sell such rights.[117] Under the exemption revenue sharing also could be required in the future with regard to luxury box sales and sales of stadium advertising brochures and such similar revenues. An attempt to impose rules respecting team debt or other expense limits is similarly possible under exemption (2). It was reported that such a proposal was suggested by NFL Commissioner Rozelle at the league's 1985 winter meeting but was opposed by owners as "illegal".[118]

---

[117] It has been suggested in congressional hearings that Al Davis would use the *Raiders* court precedent to sell and keep for his team revenues that might be generated from the sale of local cable or pay-cable television rights. Such a sale would have a significant impact on the value of the NFL's present and future television contracts with the major networks. Weistart, *supra* note 41, at 1016 note 8. Counsel for the National Football League has testified that the 1961 statute does not reach the agreement between the clubs: "The [1961] statute applies to the sale agreement with the network, not the agreement among the clubs to dispose of their revenue." Hearings on S. 2784 and S. 2821, "Professional Sports Antitrust Immunity", Sen. Judiciary Committee, 97th Cong., 2d Sess. (1982), 40 (1982 Antitrust Hearings).

[118] See Janofsky, "N.F.L. Eyes Club-Debt Limit," N.Y. Times, March 10, 1985, at sec. 5, p. 7. "'I think it's illegal,' said Joe Robbie of the Miami Dolphins, who opposes the resolution. 'If the league can't tell Al Davis he can't move his team to Los Angeles, how can it tell me how much money I can borrow against my club? The league ought to stay out of everybody's affairs. If I were to get into a financial squeak, I don't want anybody telling me I can't use my assets to borrow.'"

(continued)

Finally, it is conceivable that the exemption could be construed to allow pooled cable-TV sales despite the disclaimer of section 10(a)(2) of the proposal that states that nothing in the bill will "alter or affect the applicability or inapplicability of the antitrust laws or any applicable Federal or State law regarding broadcasting or telecasting, including [15 U.S.C. 1291], to any agreement between any professional sports league or its member clubs and any person not affiliated with such league for the broadcasting or telecasting of the games of such league or its member clubs on any form of television." It is not perfectly clear whether the disclaimer would overcome the breadth of exemption (2) since the disclaimer does not specifically refer to cable television systems but rather specifies television alone. In view of the considerable differences in technology, it is possible a court might construe the disclaimer as not applying to matters involving a cable television system. Some support for such a view may be derived from the legislative history of section 1291 and a construction of the language of that provision.[119]

(continued) Whether a debt limit rule could be extended to include limits on player salary expenses is more problematical. Arguably, deferred compensation schemes, which have become burdensome for many professional teams, are an appealing target for restraining escalating player expenses and are within the concept of debt. A comprehensive salary cap scheme has been incorporated in the most recent collective bargaining agreement between the National Basketball Association and the NBA players union. See Weistart, supra note 41, at 1039 note 80. But section 10(a)(1) of S. 259 appears to disclaim any effect on "the applicability or inapplicability of the antitrust laws, labor laws, or any other provision of law to the wages, bonus, or other terms and conditions of employment of players in any professional sports league, to any employment matter regarding players in any such league, or to any collective bargaining rights and privilege of any player in any such league." Thus any attempt to unilaterally impose any scheme resembling a salary cap is bound to incur the determined opposition of a league's players association.

[119] An argument might be constructed on the following lines: The 1961 statutory provision was meant simply to overrule a district court decision declaring a pooling agreement between the NFL and a network invalid under the antitrust laws. That (continued)

Exemption (3) immunizes rules governing the selection of owners of clubs if such rules require approval of not less than three-fourths of the members and the selection is not exercised in a discriminatory manner.[120] No judicial review is provided for such selection or non-selection decisions.

(continued) court decision did not invalidate a similar agreement then existing between the AFL and another network. While the legislative history of section 1291 makes it clear that cable or pay-cable TV pooling agreements were not meant to be included in the exemption for "sponsored telecasting" of games, it did not declare such cable pooling agreements unlawful, it simply left them in limbo. Thus, the broad exemption of section 4(2), combined with the language of section 10(a)(2) disclaimer which leaves the effect or non-effect of section 1291 in tact, might militate a court to find room for a pooled cable-TV exemption under S. 259. The plausibility of such an argument is apparently buttressed by the testimony of legal counsel for the National Football League in a hearing before the Senate Judiciary Committee in 1982 on S. 2784. That bill contained the same revenue sharing exemption here under discussion. When the question was raised as to the scope of the 1961 exemption, the following colloquy took place between Senator Specter and NFL counsel:

> Senator Specter. Just a minute. The pay and the cable issues are very important to the public generally, and we are now on this area which really involves where you are heading in that field. And if this statute does not give you an exemption from the antitrust laws, it seems to me you ought to be looking for it.
>
> If it does give you an exemption, then you do not need it, and no matter who is going to litigate -- and there may be someone as well as the Raiders down the road who, for the millions involved here, will raise a litigation issue. This is a matter of vital concern while we are picking up this entire web.
>
> Mr. Tagliabue. Well, two further points on that. First, the words "sponsored telecasting" in that statute were intended to exclude pay and cable. That is clear from the legislative history and from the committee reports. So, that statute does not authorize us to pool and sell to pay and cable.
>
> But it is an open question whether you could pool as a league without a statute. The American Football League pooled without a statute. The NCAA pools without a statute. And it is not clear that under the antitrust laws, you are prohibited from pooling and selling as a sports league, especially if you are a business joint venture sharing the revenues.
>
> So, what our rights are with respect to pay and cable outside of the statutory framework is unclear.

[120] Section 4(3).

Exemption (4) allows a league immunity for rules respecting the termination of ownership of a member club if such rules require that termination shall (1) require a three-fourths vote of member clubs, (2) not be exercised in an arbitrary, capricious, or discriminatory manner, and (3) only be exercised in circumstances that clearly evidence a threat to the image or integrity of the sport or league.[121] Judicial review of a termination decision may be had on the questions whether the compensation offered for the terminated owner's interest reflects its fair market value and whether the "termination was made in an arbitrary, capricious or discriminatory manner".[122]

Finally, sections 11 and 12 of S. 259 would forbid state eminent domain proceedings instituted pursuant to state or local law after January 23, 1985, thereby precluding the types of proceedings that have been brought by the cities of Oakland and Baltimore.

A more limited, pointed approach is provided by S. 172 introduced by Senator Specter. Applicable only to professional football teams which have played for six or more years in a municipality, the bill would forbid a move unless a stadium lease was materially breached, the stadium is inadequate and the stadium authority won't remedy it, or the team has lost money for the past three consecutive years. An antitrust exemption is accorded to any league that restricts removal based on the aforementioned criteria. The bill was apparently aimed at the threatened move of the Philadelphia Eagles, a problem that is now moot with sale of the team to new ownership that has pledged to keep the club in Philadelphia.

S. 287, sponsored by Senator Gorton, establishes a more complex procedure designed to inhibit team relocations. A team desiring to move must give three months' notice, together with a check for $50,000 which is used to cover the expenses of the mandated proceeding. The league first must hold a hearing. If it allows a move it must show that it is "necessary and appropriate" under nine criteria established by the bill.[123/] Then its decision must be submitted for de novo review by a three-member Arbitration Board. The Board can also receive a retention offer to keep the team in the locality. If the Board finds the relocation is not necessary and appropriate, it can reject the move. It may also adopt a retention offer but if the league by a majority vote rejects the offer, the Board must permit the relocation. If a league initially determines that a proposed move is not necessary or appropriate, no Board need be established. Judicial review is precluded except to determine if the Board or the league considered the statutory factors and to ascertain whether a decision on a retention offer was arbitrary or capricious.

---

[121] Section 4(4).

[122] Section 7(e).

Section 201 provides an exemption allowing a league to enforce member compliance with a pooling agreement for sponsored telecasts. It would appear that the

---

[123/] The criteria are: (1) the adequacy of the stadium in which the team played its home games in the previous season and the willingness of the stadium authority to remedy any deficiencies in such facility; (2) the extent to which fan support for the team has been demonstrated during the team's tenure in the community; (3) the extent to which the team has, directly or indirectly, received public financial support by means of any publicly financed playing facility, special tax treatment, and any other form of public financial support; (4) the degree to which the owner or management of the team has contributed to any circumstance which might otherwise demonstrate the need for such relocation; (5) whether the team has incurred net operating losses, exclusive of depreciation and amortization, sufficient to threaten the continued financial viability of the team; (6) the degree to which the team has engaged in good faith negotiations with members and representatives of the community concerning terms and conditions under which the team would continue to play its games in such community; (7) whether any other team in its league is located in the community in which the team is currently located; (8) whether the team proposes to relocate to a community in which no other team in its league is located; and (9) whether the stadium authority, if public, is not opposed to such relocation.

language of the provision does not go beyond the exemption of 15 U.S.C. 1291 and thus would not allow pooling of cable TV rights.

Section 202 requires all sports facilities to be available for use by all professional teams on fair and reasonable terms and without discrimination, a provision apparently designed to encourage expansion of rival leagues.

Section 303 mandates that the National Football League expand by four teams by 1990, including the placement of teams in Baltimore and Oakland, and that major league baseball expand by two teams by 1988. Congress' plenary authority over interstate commerce would appear to amply support the mandate.

H.R. 751 (as corrected by H.R. 885 to add hockey to the list of convered sports), submitted by Representative Mikulski, is the House companion measure to S. 287.

Senator DeConcini's S. 298 simply provides antitrust exemptions for league decisions denying relocations, while preserving suits challenging a decision to allow a relocation; and for a broad revenue sharing exemption. Our comments with respect to the breadth of the revenue sharing exemption, and the effect of the television disclaimer in section 3(d) of the bill, made with reference to S. 259 appear equally applicable here.

H.R. 785, by Mr. Dellums, would require notification of a proposed reloction and forbids relocation unless it is established that a stadium owner has breached a significant term of the lease and has not remedied it within a reasonable period; the stadium is inadequate and the inadequacies will not be remedied in a reasonable period; or the owner has sustained losses for three consecutive years. The bill provides that a governmental authority can buy the franchise in question for fair market value or at a price equal to that of another offeror who intends to remove the franchise. Finally, the bill applies retroactively to all relocations effected after January 1, 1979, and mandates the courts to order covered relocated franchises back to their original locations pending the outcome of the proceeding. This provision may present a substantial constitutional issue under the due process[124/] and takings clauses[125/] of the Fifth Amendment in view of the lengthy period the bill reaches back.

H.R. 510, by Mr. Luken, is essentially similar to H.R. 785 except it does not contain a retroactivity provision.

H.R. 956, introduced by Mr. Brooks, would provide the same antitrust exemptions as contained in sections 4(1) and 4(2) of S. 259 as reported. Our comments there with respect to those exemptions, and the effect of the sponsored television disclaimer, may be applied here. However, H.R. 956 differs significantly with regard to antitrust exemptions given for league selection and termination decisions. Unlike S. 259, the bill provides for no minimal standards for such ownership decisions nor does it provide for judicial review of such actions. Finally, H. 956 does not expressly provide for any hearing process applying objective standards before a league may make a relocation decision.

Conclusion

The variety of pending proposals dealing with sports franchise relocations presently do not appear to offer a clear cut choice. Each reflects the wide diversity of interests and problems involved. These include the economic and psychological

---

[124/] See *Railroad Retirement Board* v. *Alton Railroad*, 295 U.S. 330 (1935); 295 U.S. 330 (1935); but see *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976) and *Machman Corp.* v. *Pension Benefit Guarantee Corp.*, 592 F. 2d 947 (7th Cir. 1979), aff'd on other grounds, 446 U.S. 359 (1980).

[125/] *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393 (1922); *Louisville Joint Stock Co.* v. *Radford*, 295 U.S. 555 (1935). But cf. *Penn Central Transportation Co.* v. *City of New York*, 438 U.S. 104 (1978).

interests of fans and localities that seek to obtain them. Also, some bills attempt to take into account the concerns of leagues with respect to their perceived need to maintain stability, continuity and the ability to make long term decisions for the benefit of all members, which may diverge from those of individual clubs which might seek to take economic advantage of an apparent business opportunity. These divergent concerns in turn raise questions as to the nature of sports leagues; whether the relocation decision should be left with the league, the locality, a neutral private or public third party body, or the courts; and the standards by which such decisions should be made. Legislation now under consideration does not as yet reflect a consensus of the proper balance of interests or the answers to these critical questions.

A further complicating factor is that many of the proposals include antitrust exemptions for sports leagues that do not appear directly related to the team movement issue. Here, considerations of industry need may be balanced against Congress' traditional reluctance to grant such immunity[126] and questions such as the potential reach of such exemptions and their impact on member clubs and competitors of the sports industry, among others, might be raised.

The process of sorting out and resolving these conflicts may prove a difficult, but interesting and valuable legislative task.

Morton Rosenberg

Morton Rosenberg
Specialist in American
Public Law
American Law Division
May 24, 1985

---

[126] See, Final Report, *supra* note 1, at 43.

Mr. TYDINGS. Mr. Chairman, I would like to commend you and Senator DeConcini for your efforts focused on this grave issue of stability of sports franchises. I think that there is a fundamental national interest in that problem.

As you know, States have lost literally millions of dollars by relocations, primarily prompted by greed or opportunism of individual owners, and I think that your leadership and initiative is highly commendable.

I would like to point out, however, that 19-years ago I was sitting in your spot, on your committee, and acting on a proposed exemption which would further the power of the National Football League, and I gave their legislative leader, Mr. Rozelle, perhaps one of the most effective legislative operatives in the last 20 years, my support carte blanche. He had my vote, without any questions asked. I might point out that what has happened in the 19 years since is a far cry from what I envisioned them.

The population of the United States has increased by 25 million people in the last 20 years. Two new franchises have been granted in the National Football League during that period. Both were really extracted at the price of blocking legislation which would allow States and communities protection from NFL imposed blackouts.

I agree with you and Senator DeConcini that stability is one of the important issues that we are concerned with.

I would like to read you one paragraph in the Governor's resolution. This is incorporated in Governor Hughes' testimony.

> While virtually all aspects of the relationship between sport franchises and State and communities in which they play can be handled at the State and local levels, only action by the U.S. Congress can remedy the problem associated with the indiscriminate shifting of sports franchises. The problem of franchise mobility is merely the symptom of the true problem of franchise scarcity.

I am concerned that the Danforth bill, which was reported out of the Commerce Committee, and which is in front of you, and which has been referred to by some caustic commentators, not without veracity, as the National Football Owners Relief and Enrichment Act of 1985, really glosses over the real problem scarcity. Indeed, it exacerbates the problem, because it provides additional antitrust exemptions in a league which already benefits from antitrust protection, which no other unregulated industry possesses today. If you were to pass out and adopt the Danforth bill as presented, it would give the National Football League additional powers to pool revenues. It would give them the power without amending their bylaws as the court suggested they do in its opinion in the *Los Angeles Coliseum* case. The adverse ruling in that case is the reason the National Football League states they need help here. The NFL has not amended their bylaws, but have decided to go directly to you to seek another antitrust exemption and take them even more out of the arena of competition.

In effect, the Danforth proposal would make it even more against the owner's interest to agree to a new franchise. If you pass the Danforth bill as presented, if you really focus on it, what you are doing is creating even more instability because you are ensuring continued scarcity.

This will create even more problems for great cities like Philadelphia or New York or St. Louis, which now have franchises. I have some concern, Senator, with your bill, and, as I said initially, I commend you for your leadership. The fact that you are focusing on the problem is a primary cause we are having this hearing.

My concern with your legislation is my fear that you might not structure it in such a way as to provide for adequate court review of relocation problems. If you leave the relocation problems entirely with the National Football League, you have to be governed by their history, and the history of the Raiders' move, Mr. Chairman. A year or two prior to the Raiders' move from Oakland to Los Angeles, the league owners unanimously approved the relocation of a very profitable franchise, the Los Angeles Rams, from the second largest city in the United States down the road to Anaheim, CA to a completely new franchise. In the Los Angeles Rams' move the owner was close to the other owners, and the relocation was not considered a problem. The leagues by-laws were structured to cover this move.

Senator SPECTER. My bill, 172, does provide for judicial reviews.

Mr. TYDINGS. I understand it does, but you restrict the area that the court can review. You give certain presumptions. You do not permit a de novo review, and what I am arguing is that by giving those presumptions to the NFL, you are really thwarting the opportunities of the cities and the communities to protect themselves.

Senator SPECTER. Senator, I do not believe that we do give presumptions. We set—S. 172 grants an antitrust exemption for the league to establish the rules for franchise removal, which would essentially turn on profitability, not to have lost moneys over a 3-year period, and an adequate stadium, and if those conditions are not met, the court can act to stop the move.

Mr. TYDINGS. My concern, Mr. Chairman, is that unless you give the courts the broad power, the de novo power, to review that, you are increasing the monopolistic powers of the league, and you are not protecting your city or the other cities.

Senator SPECTER. I know what de novo powers of review mean, but I do not think that we deny the court that power. We provide for judicial review generally. We do not customarily specify——

Mr. TYDINGS. Then if you do not deny it, it should be clearly spelled out in the legislation, because you saw, as Senator Gore reported here, what happened in the House Judiciary Committee at that time in 1961. When the Congress gave the original antitrust exemption to pool television revenues, Mr. Rozelle was questioned in some detail about the possibility of the NFL being about to contract simultaneously with all three TV networks. He answered, when questioned by the committee counsel, that the NFL would never ever have all three networks tied up. He answered that the NFL certainly would not use the statute for that purpose. It would be very unfair he said.

Well, look what has happened. It is impossible for competitors to go into the arena when all three broadcasting networks are now tied up by the National Football League.

Senator SPECTER. I do not think you could have solved that problem by reference to judicial review. Let me ask you this question: If you had judicial review which satisfied your standards as to the scope of judicial review, would you think it appropriate to grant the limited antitrust exemption on one phase, franchise relocation?

Mr. TYDINGS. As long as you have relocation, as long as you have court review, I would certainly be willing, because that would protect the cities, Mr. Chairman.

I think we all can agree on that. The other point I would make with respect to your question is that this approach is just treating an immediate symptom with a band-aid. It is not looking at the basic problem, and the basic problem, as the Governors pointed out, is scarcity, and the basic problem is that if you and the U.S. Congress——

Senator SPECTER. What do you do about that?

Mr. TYDINGS. We have an amendment which we have offered as part of the Governor's testimony, which is attached to your bill and adopted as part of the compromise, would mandate the National Football League within 1 year to come up with certain criteria, and expand to at least a minimum of two teams within a short period of time.

Senator SPECTER. Not necessarily.

Mr. TYDINGS. Not necessarily. Just two teams. Ideally, we would like Baltimore. We would like, in a perfect world, to see the Gorton amendment, which would mandate Baltimore and Oakland as expansion cities. In our proposed amendment we would mandate two teams but not designate them by name. I think you are dealing today in our country with a situation where the laws of monopoly and human interest dominate the decisions of the NFL and that is why the owners are against expansion——

Senator SPECTER. Senator, why two teams?

Mr. TYDINGS. Two teams, because we felt that would be a very minimum.

Senator SPECTER. How about one, four, six, or authorizing Congress to provide how many teams?

Mr. TYDINGS. I yield to Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I believe that it is a reasonable judgment for us to face if we are going to grant the antitrust exemption.

In other words, if we are going to provide this exemption from the existing legal framework, it seems to me that the basis for doing it must be the public interest. Otherwise, there is no reason to give this exemption. You are not going to give it to the private interest. Since the public interest is the basis for it, I think it is reasonable for the committee, in the course of reaching their judgment, to make some determinations with respect to franchised expansion.

I do not shy away from the proposition that the committee would decide, if you were going to obtain these exemptions, you have got to expand by four franchises.

Senator SPECTER. Senator Sarbanes, would you limit the antitrust exemption to the issue of franchise relocation alone, or would you go along with revenue sharing and selection of owners?

Senator SARBANES. I think those interrelate with the extent of a public interest standard that you impose on the league. The broader the exemption, the more far reaching, I think, the standard, the public interest standard has to be, but it is my own view that the

Congress ought not to start down the path of exemptions without addressing to some degree the public interest questions.

Senator DeConcini. Would the Senator yield?

Senator Specter. Senator DeConcini.

Senator DeConcini. It seems to me, Senator Sarbanes, that prior to the Oakland lawsuit, quite frankly the exemption that was granted has worked very well, because the league has expanded, not as quickly and rapidly as I would like to see it, nor did it go to Phoenix, but it has made some expansion, and it has kept, until that lawsuit, teams from moving through the adoption of these rules, which, really, it seems to me is the fundamental things we want to do here.

Had we passed this legislation in 1982, in which your mayor of Baltimore testified, and so did you, in support of, Baltimore would have a team today.

Senator Sarbanes. I think in view of the developments we have to address two questions. One is not moving franchises from those cities which now have them, except for clearly justified and necessary reasons.

And second, to address the question of providing franchises to those cities that have a legitimate claim for them, because unless you address the second question, you are going to continue to have this bidding war which has been going on, which I think is extremely harmful to the public interest.

Senator DeConcini. Cannot you solve the bidding war by permitting an antitrust exemption to adopt the rule that would not just let anybody just pick up and leave without some guidelines?

Senator Sarbanes. I do not think you then address the communities that are seeking franchises or need to recruit franchises, which is a legitimate concern for many members.

Mr. Tydings. Could I respond to Senator DeConcini?

The court in the *Los Angeles Coliseum* decision did not deny the NFL the power to oversee relocation. It merely struck down rule 4.3 that required three-quarters of the membership approval of relocation with no specified criteria. Whether or not the three-quarters liked or disliked it, the court specifically left room to amend the bylaws and change, you know, change the approach which the court made.

Now, the NFL decided they did not want to do that. They wanted to come in here and seek further exemptions from the Congress, as they have in the past.

Senator DeConcini. Senator Tydings, would you advise him to do anything else? They will face another lawsuit. No wonder they sought some relief. The court said you can adopt rules, but you have to bite a bullet, a big one.

Mr. Tydings. They did not need legislation to come to the aid of Philadelphia when there was a major television market that was involved. They turned their back on Baltimore when they moved out in the middle of the night. But when television was involved, they got together and worked the problem out. In my response to your earlier question, when the Los Angeles Rams wanted to move, the second largest market in the Nation, very profitable, down to Anaheim, the NFL owners all played lackey to Carole Rosenbloom the owner of the Rams. They moved right down the road, and no problem about the abandonment of Los Angeles.

This was what created the move from Oakland down to Los Angeles. The point I am trying to make is you do not resolve the problem by giving the NFL more power, more antitrust exemptions. You have gone down that road for 20 years, and, Mr. Chairman, you now have a situation, as the Governors point out, where the scarcity is creating the problem.

Oakland was left sitting there with $30 million worth of unpaid bonds. Indianapolis was coerced into putting in $18 million for a new stadium without a team, and tried to make all sorts of compromises to get the Baltimore Colts out of Baltimore to their city.

Senator DeConcini. Senator Tydings, would you agree that prior to the Oakland lawsuit that that exemption worked pretty well? It kept teams where they were, or it permitted them to move with the market, and some expansion. Not enough as far as I am concerned, but do you not think that it worked pretty well until one owner——

Mr. Tydings. It worked pretty well with respect to relocation. It did not work very well with respect to expansion, Senator. If you had anything like competition, you would have had another league, and you would have had teams in Phoenix, in Memphis, and really throughout the Sun Belt, you would have at least six or eight more NFL teams competing today. Unfortunately the owners would not approve expansion either. Unfortunately it was not good common sense for the owners, who had a cartel situation, to voluntarily split up the pie as Senator Gore and Senator Sarbanes pointed out, why on earth should the NFL owners permit another expansion when it would reduce their share of the television pot?

And that is why you trace the expansion history.

Senator DeConcini. I thank the chairman.

Mr. Tydings. There has not been an expansion town in 20 years except in response to the Congress handing out an exemption or other legislative goody.

Senator Specter. Senator Tydings, I believe you said that Baltimore is not a major television market.

Mr. Tydings. Baltimore is not in the category of New York, Philadelphia, Los Angeles, Dallas, or Chicago. In the ADI's, Baltimore may be 26th or 27th. It is not a major television market in the sense that New York, Philadelphia or the top 10 or top 20 are.

Senator Specter. Senator Mathias had hoped to be here today, but he is presiding at a very important hearing of the Rules Committee, and he cannot be here. His statement will be included in the record without objection.

[Statement follows:]

OPENING STATEMENT OF
SENATOR CHARLES MCC. MATHIAS, JR.
SPORTS ANTITRUST HEARINGS
SENATE JUDICIARY COMMITTEE
JUNE 12, 1985

I would like to thank the chairman for holding these hearings today on sports antitrust. In addition, I'm delighted that Maryland has fielded such a strong team to testify today. I look forward to their comments as the Judiciary Committee continues its deliberations on this legislation.

As we examine the proposals before this committee and perhaps even fashion new ones, it is necessary to keep our goal clear -- and that is to protect the public interest. Congressional review of the sports industry derives from the Constitutional mandate to promote commerce. As commerce has changed over the years, so have the laws that promote its practices. However, one theme is consistent -- that the promotion of commerce is done best by maintaining free and fair competition.

In the last 95 years our antitrust laws have been the guarantors of free and fair competition and they still are. As Senator Sherman of Ohio, author of the antitrust act that bears his name, put it during the floor debate on S. 1 in the 51st Congress, "This bill does not seek to cripple combinations of capital and labor, the formations of partnerships or of corporations, but only to prevent and control combinations made with a view to prevent competition, or for the restraint of trade, or to increase the profits of the producer at the cost of the consumer." Although our antitrust laws have been modified somewhat since 1890 that purpose -- the promotion of free and fair competition -- is still valid today.

It is against this backround that we should examine the legislative proposals before us, particularly S. 259. Although relocation of sports teams is an important concern of mine, our investigation should not be limited to that issue. While S. 259 ostensibly is designed to solve the relocation problem, it also expands the antitrust immunity of the sports leagues in several ways.

First, it insulates all league decisions on relocation from antitrust challenge. Second, it allows the leagues to select new owners. Third, it allows team owners to kick another owner out of their league without fear of an antitrust suit. Finally, S. 259 gives the leagues carte blanche to pool revenue from whatever source. These are extraordinary exemptions.

Antitrust exemptions rarely are granted to any industry, and when they are, they ought to be circumscribed carefully to relieve particular hardships. The burden of proof for the enactment of specific antitrust immunity must rest with the industry that seeks the exemption. As public officials, we must be absolutely certain that this additional immunity is needed to relieve a specific hardship. We must be certain that no other way can be found to solve the problems of team instablity insofar as leagues, owners, fans, and entire communities are involved. So far, I am unconvinced.

Each time the leagues have come to Congress asking for additional immunity, they have justified it by claiming financial hardship. In 1961, immunity was needed to pool television revenue or, it was argued, the leagues could not survive. In 1966, the football leagues asked for and received additional immunity to merge in order to forestall economic hardship. Now, here they are again asking for more antitrust exemptions, which go well beyond the relocation issue, and again we are told that it is for financial reasons.

It is time for us to examine the books. We must consider, in a full and open debate, the purpose for the exemptions; the market power they will give existing leagues; and the effect they will have on competitors and especially on comsumers -- communities and fans.

It is within that context that I wrote to Mr. Rozelle asking for detailed financial information about the National Football League. Last night, I received some of the financial materials that I requested and I look forward to reviewing them.

It may be that the sports industry is unique and requires special treatment beyond that already accorded it by both Congress and the courts. Or perhaps it is the current antitrust situation that is causing the problem and needs to be changed to promote free and fair competition. We should not legislate in the same manner that the Colts left Baltimore -- in the dark. Special treatment needs to be justified. I look forward to the testimony of the witnesses.

Senator SPECTER. The record will be held open for two weeks so that Senator Mathias will have an opportunity to review the testimony and propound questions.

Senator McConnell.

Senator MCCONNELL. Thank you, Mr. Chairman.

I would also like to include an opening statement in the record.

Senator SPECTER. Without objection, it will be included.

[Statement follows:]

STATEMENT OF SENATOR MCCONNELL
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY, HEARING ON PROFESSIONAL SPORTS ANTITRUST

JUNE 12, 1985

Mitch McConnell
By VBm

MR. CHAIRMAN, I APPRECIATE THE OPPORTUNITY TO PARTICIPATE IN THIS HEARING, AND COMMEND YOU FOR CALLING THE HEARING SO THAT THIS COMMITTEE MIGHT EXPLORE THE NEED FOR FURTHER REFINEMENT OF THE ANTITRUST LAWS, ESPECIALLY AS THEY RELATE TO INDUSTRIES THAT MIGHT NOT FIT THE CLASSIC MODEL OF A COMPETITIVE MIX OF INDEPENDENT BUSINESS ENTITIES BATTLING IN THE UNFETTERED MARKET.

IT HAS BEEN SAID BY SOME THAT THE AREA OF THE LAW KNOWN AS ANTITRUST HAS BECOME A FORMLESS MASS, DEVOID OF SUBSTANCE. IN MANY RESPECTS THAT ASSESSMENT HAS BEEN ACCURATE, AND ANY LAWYER WHO TRIES TO PREDICT THE OUTCOME OF A GIVEN ANTITRUST CASE HAS PERHAPS MORE OF A GAMBLER'S PERSPECTIVE THAN AN ANTITRUST LAWYERS VIEW. THIS IS ESPECIALLY TRUE IN THAT PART OF ANTITRUST DEVOTED TO THE SPORTS INDUSTRY. NOT ONLY ARE THE GENERAL PROBLEMS ASSOCIATED WITH ANTITRUST ANALYSIS PRESENT, BUT THE PECULIAR NATURE OF THE SPORTS INDUSTRY MAKE INFORMED ANALYSIS ALL THE MORE DIFFICULT.

NOTED ANTITRUST SCHOLARS HAVE POINTED OUT THAT SPECIAL CONSIDERATIONS COME INTO PLAY WHEN LEAGUE SPORTS ARE INVOLVED. PROFESSOR WEISART HAS SUGGESTED THAT "THERE ARE SERIOUS WEAKNESSES IN TH ARGUMENT WHICH SUGGESTS THAT LEAGUE FRANCHISING

PRACTICES SHOULD BE VIEWED IN THE SAME LIGHT AS TRADITIONAL FORMS OF HORIZONTAL TERRITORIAL RESTRAINTS." SOME COURTS HAVE HELD THAT A PROFESSIONAL SPORTS LEAGUE ACTS AS A SINGLE BUSINESS ENTITY, COMPETETING ONLY AGAINST OTHER, SIMILARLY ORGANIZED LEAGUES. NEVERTHELESS, THE SUPREME COURT RECENTLY HELD THAT THE NATIONAL COLLEGIATE ATHELETIC ASSOCIATION COMMITTED ANTITRUST VIOLATIONS WHEN IT IMPOSED RULES AND REGULATIONS, I.E., RESTRAINTS OF TRADE, ON THE BROADCAST OF GAMES CONDUCTED UNDER THE AUSPICES OF THE NCAA BY IT'S MEMBER ORGANIZATIONS. MORE RECENTLY, COURTS HAVE HELD THAT A LEAGUE MAY NOT DICTATE FRANCISE LOCATIONS TO AN OWNER, THEREBY RAISING SERIOUS QUESTIONS ABOUT THE STRENGTH OF THE AGREEMENT AMONG FRANCHISEES THAT UNDERLIES ANY LEAGUE ORGANIZATION. AND OF COURSE, CERTAIN PROFESSIONAL SPORTS LEAGUE ACTIONS HAVE BEEN SPECIFICALLY SANCTIONED AS EXEMPT FROM THE ANTITRUST LAWS.

IT IS AGAINST THIS BACKDROP THAT THIS COMMITTEE CONSIDERS THE BILLS BEFORE US TODAY, MR. CHAIRMAN. THE DANFORTH-EAGLETON BILL, S.259, SEEKS TO EXEMPT THE ACTIVITIES OF THE NATIONAL FOOTBALL LEAGUE FROM THE PROVISIONS OF SECTION 1 OF THE SHERMAN ACT, TO PERMIT ENFORCEMENT OF LEAGUE AGREEMENTS REGARDING RELOCATION, AND TO RECOGNIZE THE VALIDITY, IF NOT THE NECESSITY, OF THE LEAGUE'S REVENUE SHARING ARRANGEMENTS. OTHER BILLS INTRODUCED SEEK TO PROVIDE FAR MORE SUBSTANTIAL GOVERNMENT INVOLVEMENT IN THE FUNDAMENTAL DECISIONS OF THE LEAGUE AS A COLLECTIVE BODY, WHILE OTHER PROVISIONS, AS PRESENTLY DRAFTED, SEEM MERELY DESIGNED TO PROTECT THE INTEREST OF THOSE METROPOLITAN AREAS THAT ALREADY HAVE NFL FRANCHISES, BUT FEAR THAT THEY MAY LOSE THEM.

COMING FROM KENTUCKY, MR. CHAIRMAN, A STATE WITH NO MAJOR LEAGUE PROFESSIONAL SPORTS FRANCISE IN ANY MAJOR SPORT, I HAVE THE LUXURY OF BEING ABLE TO LOOK AT THESE BILLS WITHOUT ANY SUBJECTIVE BIAS. I BELIEVE THAT IS THE SITUATION IN SOUTH CAROLINA AS WELL, AND IT MAY BE A PERSPECTIVE THAT WILL BE ESSENTIAL TO CLEARLY ANALYZE THE IMPACT OF THESE BILLS.

I BELIEVE IT FAIR TO SAY, MR. CHAIRMAN, THAT ALL OF US IN CONGRESS AS WELL AS EVERYONE HERE TODAY SEEKS TO PERSERVE AND PROMOTE THE SPORTS INDUSTRY, AN INDUSTRY THAT PRODUCES A TREMENDOUS AMOUNT OF ENJOYMENT AND SATISFACTION WITH FEW, IF ANY, OF THE UNPLEASANT CONSEQUENCES MANY INDUSTRIES FACE. WE ALL AGREE THAT A HEALTHY, COMPETITIVE SPORTS INDUSTRY IS A VALUABLE NATIONAL ASSET, AND ONLY DISAGREE ABOUT THE BEST WAY TO ACHIEVE THAT GOAL.

I AM LOOKING FORWARD TO THE TESTIMONY OF THE WITNESSES ON THESE BILLS, AND WANT TO JOIN YOU IN WELCOMING SENATOR EAGLETON AND SENATOR GORTON HERE TODAY.

THANK YOU, MR. CHAIRMAN.

Senator **McCONNELL**. Let me say briefly, on my way out the door, that I do not see much hope for a Louisville, KY, franchise under any of these proposals, other than rampant growth.

I must say my presumption is in favor of the Danforth bill. I am still having a bit of a hard time coming to the conclusion that we need to dabble in the league's business as much as it appears some of the other proposals tend to do. However, if you had to state the single, strongest argument for some approach other than the Danforth proposal, what would you say, Senator Tydings?

Mr. **TYDINGS**. I would say that Congresswoman Mikulski's approach, which was commented on by Senator Paul Sarbanes and also by Senator Gore, makes a lot of sense.

Unfortunately, you are legislating in a vacuum here, really. You are not focusing-on the complete picture. You are focusing on one thing; relocation and the stability of existing franchises. You are not focusing on scarcity. You are not focusing on history. You are not focusing on the monopolistic effect, on the state and local community.

If you would adopt Ms. Mikulski's proposal, which designates a few Senators and a few Congresspersons, using their own staff, to work for 6 months or 120 days, and report back and focus on the entire picture, give them subpoena power, so you can bring Mr. Rozelle and some of his owners in, and get some of the facts on the table, I think that you could, report out of this committee much more comprehensive and responsible legislation. I hope you realize that you are dealing with a national interest.

Any time a congressionally created monopoly as the NFL is leaving a city like Oakland with $30 million in bonded indebtedness with only a vacant stadium to pay the interest on the debt, you have a responsibility to act. It is of major public interest, and as the governor said, Congress has created the situation by exemptions, so there is not competition. Congress needs to address the complete picture.

Ms. **MIKULSKI**. Senator McConnell, if I may comment on that. You see, Senator DeConcini is right. Up until 1982, the existing law worked very well, and it let the genie out of the bottle and it wanted to go other places, and bidding wars started.

This is the U.S Senate Judiciary Committee. It has presided over some of the most auspicious legislation to occur in the free world. You now are confronted with new areas of consideration to really take us into the future; just as you are looking at new copyright laws to deal with the new electronics explosions, we now have a new area of endeavor called sports law, and if you have been beseeched, as I have, you would know that where we are at this point in American history is, sports are not independent operations. They have now become joint ventures with government. It could involve enormous tax subsidies. The buying of tickets, the condo writeoff for sky boxes, a whole host of things to be considered in the bill. At State and local levels, tax subsidies, building of stadiums, et cetera, and very often when they play, they do not play in a factory they built. And their revenue garnishment comes to a whole host of other things involving antitrust.

What I am saying is I would love stability, and I would love a team in Baltimore, but at the same time we owe it to the American people to create a framework of the future, and a framework now of what sports law will be as we move ahead over the next 10 or 20 years, with all kinds of new electronic ways, from pay TV to videos, and we do not even know what the world holds, and that is why I do not want some select committee with big bucks poured into it and a staff, to come back to our bicameral bodies to say what will be sports law for the next decade or two.

Senator SARBANES. I share the concern about dabbling in the league's business, but I think that bridge was crossed when the league sought and was granted exemptions from the antitrust law. I mean, if they want to give up the exemptions in the antitrust law, then they can operate under the normal economic framework that we have, and no one will dabble in their business. Their perception is that for reasons that they constantly assert before the Congress, that they cannot do it that way, I think there is some merit to that argument; therefore, to the extent that they seek the exemptions from the antitrust law, I think it is incumbent upon us to address the public interest questions. These are broad questions, and I think the suggestions for a careful examination of it have a lot of merit, because we ought to try to establish a framework that makes sense for the future.

It is one thing if you have a set of criteria that Louisville can look at and say, well, maybe we do not meet them now but we are going to meet them down the road somewhere. Those are reasonable criteria by which to be judged in terms of being in the franchise, and at least you have a standard that people can accept.

It is not done on some arbitrary, willy-nilly basis, and you know exactly where you stand. You may qualify under the standards or you may qualify 1 year from now, 3 years from now or 5 years from now. It seems to me that is not unreasonable to establish criteria from the public interest point of view in dealing with this framework, when you are addressing very broad and sweeping exemptions from the antitrust law.

Senator MCCONNELL. Thank you, Mr. Chairman.

Senator SPECTER. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I am going to have to do two things. One, not ask questions of these witnesses, but insert a statement, and then I do have one question that I am going to have answered by certain witnesses by written response.

Senator SPECTER. Fine. The questions will be submitted.

[Information follows:]

STATEMENT BY SENATOR CHARLES E. GRASSLEY

I thank the chairman for holding these hearings on the issue of professional sports team relocation. I look forward to hearing the view of our distinguished congressional witnesses today, as well as the testimony of other parties interested in this issue, especially in light of events involving teams in Oakland and, more recently, Baltimore and Philadelphia.

Sports leagues appear to be unique, in that their member teams may be vigorous competitors on the playing field but partners in their collective wellbeing. I for one would certainly never suggest that the Federal Government should immerse itself into the management of professional sports teams. Therefore my inclination is to ask: "why should the U.S. Government get involved in this area at all?" It is my experience that individual business decisions are best left to the principals involved. In this case, individual stadium and arena owners may already have some free market tools available to them. For example, it may well be that the answer to professional sports teams relocation is to simply have these owners lock in their teams under long-term leases.

But I can also appreciate the view held by many that the stability of sports teams within their community is in the public interest.

I believe that any congressional solution, if there is to be one, must be one that balances the interests of hometown fans, the successful business operation of sports teams, and league order. I look forward to working with my collegues in reaching a reasonable consensus on this issue.

Senator SPECTER. Thank you very much, Senator Sarbanes, Senator Tydings, and Congresswoman Mikulski. We appreciate very much your coming.

We are going to be having some time problems because of commitments that everyone on the committee has, and I would like to call as a panel Mr. Edward Snider, president of the Philadelphia Flyers Hockey Club; Senator William Campbell on behalf of the Los Angeles Memorial Coliseum Commission; and Hon. Charles F. Rule, Acting Assistant Attorney General. We are going to proceed from now until 12:15. We are trying to work out an arrangement where we can hear everyone. We will appreciate it if the witnesses would limit their statements to 4 minutes.

I would like to call now on Mr. Snider, who is the owner and president of the Philadelphia Flyers of the National Hockey League, former vice president of the Philadelphia Eagles with the NFL, and very experienced on the subjects.

Mr. Snider, we appreciate your coming. We look forward to your testimony.

STATEMENT OF PANEL CONSISTING OF EDWARD SNIDER, PRESIDENT, PHILADELPHIA FLYERS HOCKEY CLUB, PHILADELPHIA, PA; HON. WILLIAM CAMPBELL, A STATE SENATOR FROM THE STATE OF CALIFORNIA, ON BEHALF OF THE LOS ANGELES MEMORIAL COLISEUM COMMISSION; AND HON. CHARLES F. RULE, ACTING ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. SNIDER. Well, Senator, I really did not have a prepared introduction, but having listened to some of the testimony, I am compelled to comment on some of the things that I have heard.

I do not know whether the Senators that are talking about revenue sharing as the problem in the NFL have focused on the fact that the total dollars to the league would be the same, whether there was revenue sharing or there was not. The only difference is that the dollars would be divided in a different manner.

The teams in large cities would get the lion's share of the money; the teams in small cities would get very little of the money, and that would compound the problem for cities such as Memphis and Baltimore, so that what would happen is that the New York teams would get $30 million in television revenue, just to pick a number, and Baltimore and Memphis would receive $3 million.

At that point the economic dislocation would create more problems than now exist. So revenue sharing is not some grant by the Government that enabled the league to do something dastardly, but what it did was create a better parody for all cities involved, and the Government recognized that problem.

In addition, it was mentioned that Commissioner Rozelle testified that he saw no way that the NFL would be on all three networks.

At the time the American Football League was on one of the networks, and the merger of the two leagues, which actually created a tremendous expansion of the NFL, caused football to appear on two networks, so I do not believe that Mr. Rozelle in any way misrepresented the facts.

I am not here to talk about the NFL. I am here to talk about the National Hockey League. I believe that the purpose of the legislation that you have recommended is outstanding, and I personally believe that it solved the problem that most of the people here are concerned about.

The uncertainty of the antitrust laws are the things that create the problems for the leagues today, and, as you saw, the National Football League did not want Oakland to move to Los Angeles, and it has cost them a bloody fortune.

Yesterday, in U.S. district court in St. Louis, the National Hockey League began a trial brought by Ralston Purina, which at one time owned the St. Louis Blues. Some new chairman of the board was appointed and was not particularly interested in hockey, and immediately they proceeded to sell the franchise of St. Louis, a city that had supported the National Hockey League since the team's inception in 1967, the same time that the Philadelphia Flyers were started in Philadelphia, and they sold the franchise to a group in Saskatoon, Saskatchewan. The entire province of Saskatchewan has a million people. There was no arena, and the group that bought the franchise was promising to have a public issue in which they were going to sell $47 million worth of stocks and bonds to accomplish this feat.

Obviously, the National Hockey League did not want a fine franchise like the St. Louis Blues, that really had problems because of the mismanagement by Ralston Purina, to move, so we refused, as the league has always done in a situation of this nature. We are now being sued for $60 million by Ralston Purina. It is a small sum to them and a large sum to us. We have already spent over $2 million in legal fees, and the trial has now started. We spent $2 million before the trial started just on depositions, et cetera. The trial started yesterday, and no one really knows how much this is going to cost us. We cannot afford the kind of thing that happened in Oakland. It could severely injure the National Hockey League.

So, therefore, the legislation that you are recommending simply removes legislation that created the problem. The antitrust laws have created these problems in sports, and I think we have to recognize that.

Senator SPECTER. Mr. Snider, you would like to see legislation that authorized the league to set reasonable rules on franchise removal on the conditions of adequacy of the stadium, profitability, et cetera.

Mr. SNIDER. Of course. The leagues themselves have never, since I have been in sports, allowed a franchise to move without good reason, because it is not in the interest of the league to let franchises hopscotch around the country.

We are running a sports league as well as a business, and we certainly do not want teams to move away in the middle of the night or to go to Saskatoon, Saskatchewan, or to leave as in the NBA's case, San Diego, to bring a second team into Los Angeles.

Those things are not in the interest of the leagues, and the only reason that these things have been allowed are the antitrust laws, so to blame the leagues and the owners is totally unfair, and basically to recognize the problem as you have is the only way to do it.

Senator SPECTER. Thank you very much.

I would like to turn now to Senator William Campbell from the State of California, who appears here on behalf of the Los Angeles Memorial Coliseum Commission.

Mr. CAMPBELL. If I could, I would like to request that my full statement be made a part of the record.

Senator SPECTER. Senator Campbell, it will be made a part of the record.

STATEMENT OF HON. WILLIAM CAMPBELL

Mr. CAMPBELL. Mr. Chairman, if I may, a little background on the Los Angeles Coliseum Commission.

We are a nine-member body, a tripartite body, made up of three representatives from the city, three from the county and three from the State of California.

We are a nonprofit organization, but at the same time we have no taxing authority and we have no tax revenue that comes to the coliseum commission.

The only revenue we have with which to operate the coliseum is funds that we raise through the clients that we were able to bring into the coliseum. We operate the Los Angeles Memorial Coliseum and the Sports Arena complex, and we are very proud of the fact that the coliseum is the only venue in the world that has hosted the modern Olympics twice, so we feel we have a little bit of history with the coliseum.

Our problems began about 16 years ago when initially the Lakers, who were playing in the sports arena, decided—became dissatisfied with the offer that the commission was giving them, and decided to build their own facility, and went down the road to Inglewood and built the Forum and started to play their games there. This caused us some great financial loss and difficulty, and, in fact, the coliseum at that time began to subsidize the sports arena.

Our problem was exacerbated in 1978 when the Rams decided to move down the road to Anaheim, and, obviously, this was a great revenue loss. This was our major client. This was a tremendous revenue loss to the coliseum. I was not on the commission at that time, but I can assure that the revenue impact would have caused us basically to have to close down that whole complex. We at that time decided that we, because we believed in the free marketplace, that we had a right to go out and try and solicit additional teams to come and play in the coliseum. We went and talked with a number of teams. One of those with whom we had major discussions were the Minnesota Vikings, and at that time the Vikings were in negotiations in a contract for a new stadium, and the question was whether they would stay there or come to Los Angeles.

A number of people with whom we met used us a means of getting better stadiums or better agreements with their landlords. In this case, at a meeting at the NFL, meeting in Hawaii at the time, and Commissioner Rozelle, to get the legislature of Minnesota of the time, said that even though it was a profitable operation, even though they had good fan support, they would not prohibit—necessarily prohibit—Minnesota from coming to Los Angeles.

That statement then caused the Minnesota legislature to pass a $55 million bond issue. They built a brandnew stadium for Minnesota, and the Vikings stayed in Minnesota. When we went to Oakland to hold negotiations with the Raiders, we ran into the situation, for at this point there was a reluctance to move a team into Los Angeles for three reasons.

No. 1, the Rams did not want the competition. They were candid about that.

No. 2, the issue of expansion is always an issue that comes up. To expand into the Los Angeles area, which has probably 10 million people in that general area, to expand into that particular area, the NFL wanted to sell that expansion because they believed that at that price they could get a better price for an expansion team in Los Angeles than they could get in Oakland. That was the testimony that the commissioner made in court when we were on trial, and, of course, the other issue was what sort of indemnification would you give the Rams for bringing another team into that area, so we believed we had a right to go and try to attract any team that we could, because of the freedom of movement, the free market idea, still operates in this country.

We went to Oakland and we were able to negotiate to bring the Raiders down, but in all honesty, if it had not been for the attitude of the Oakland Coliseum Commission, which was a multisports facility, built for football and baseball, and a number of other things, without their attitude we would never have gotten the Raiders down into Los Angeles. We managed to bring them down. The NFL objected to that, and the rest is history with which you are familiar.

Last year, the Clippers moved from San Diego to Los Angeles. We are very pleased to have them in there, yet there is a different attitude on the part of the NBA commissioner as it relates to the movement of the Clippers to Los Angeles than it was the Kings, the Kansas City Kings, to Sacramento, California.

Senator SPECTOR. We are going to have to ask you to wrap up shortly. We are not going to be able to get to the other witnesses.

Mr. CAMPBELL. I appreciate that. I wanted to point out the difference between the attitude of the Clippers on the move to Los Angeles and the Kings to Sacramento, and the real problem becomes one of indemnification. The Kings move to Sacramento initially, the Warriors, who were located in Oakland, wanted $3 million to allow the team to come into their area, 75 miles northeast of Oakland. They negotiated that down to an $850,000 agreement to allow the teams to come to Sacramento, but they did not call it a tribute payment. They stated for 5 years the Kings will pay $100,000 for a preseason game with the Warriors, to give you some sort of an indication, when the Warriors played the Clippers, it is $7,000 is what the payment is, so this was a form of indemnification to the Warriors to allow the Kings to come into the area, and I guess what it really gets down to is that the marketplace does work. We have been both the victim of the marketplace, and we have had the benefit of the marketplace. We have lost teams, gained teams, and we think that is in the best interest of the American tradition, and we hope that that will continue.

Senator SPECTER. Thank you, Senator Campbell.

[Prepared statement follows:]

STATEMENT
BY

THE HONORABLE WILLIAM P. CAMPBELL
CALIFORNIA STATE SENATOR

REPRESENTING

LOS ANGELES MEMORIAL COLISEUM COMMISSION

MR. CHAIRMAN, MEMBERS OF THE SENATE JUDICIARY:

GOOD MORNING, I AM SENATOR WILLIAM CAMPBELL, A MEMBER OF THE CALIFORNIA STATE SENATE, APPEARING BEFORE YOU TODAY ON BEHALF OF THE LOS ANGELES MEMORIAL COLISEUM COMMISSION WHICH JOINS ME IN THIS STATEMENT. I AM THE IMMEDIATE PAST PRESIDENT OF THE COMMISSION, AND CURRENTLY SERVE AS THE CHAIRMAN OF THE COMMISSION'S NEGOTIATING COMMITTEE. FOR THE RECORD AND BENEFIT OF THE COMMITTEE, A BRIEF EXPLANATION MIGHT BE IN ORDER AS TO THE NATURE OF THE LOS ANGELES MEMORIAL COLISEUM COMMISSION.

BRIEFLY, THE COLISEUM COMMISSION IS A NINE MEMBER JOINT-POWERS ENTITY REPRESENTING EQUALLY THE STATE OF CALIFORNIA, THE COUNTY OF LOS ANGELES, AND THE CITY OF LOS ANGELES FOR THE PURPOSE OF OPERATING THE LOS ANGELES MEMORIAL COLISEUM, AN OUTDOOR STADIUM, AND THE LOS ANGELES MEMORIAL SPORTS ARENA, AN INDOOR MULTI-PURPOSE FACILITY. I AM ONE OF THE STATE OF CALIFORNIA REPRESENTATIVES ON THE COMMISSION.

WHILE THE COLISEUM COMMISSION IS A PUBLIC BODY AND THE FACILITIES ARE PUBLIC, THE COLISEUM COMMISSION DOES NOT RECEIVE ANY PUBLIC MONIES FOR ITS ADMINISTRATION, OPERATION OR MAINTENANCE. IN FACT, BOTH THE STADIUM AND ARENA WERE ORIGINALLY BUILT WIHTOUT THE USE OF TAXPAYER DOLLARS AND HAVE NEVER HAD TO BURDEN THE PUBLIC TREASURY TO OPERATE. THE COLISEUM AND SPORTS ARENA ARE OPERATED INSTEAD BY REVENUES GENERATED SOLELY FROM EVENTS PRESENTED IN THE FACILITIES AND WITHOUT ANY TAXPAYER SUBSIDY OR OTHER DIRECT PUBLIC SUPPORT. ACCORDINGLY, IT IS IMPERATIVE FOR THE COLISEUM COMMISSION TO DO EVERYTHING IN ITS POWER TO INSURE THAT THE FACILITIES ARE UTILIZED TO THEIR FULLEST POTENTIAL, WITHOUT BURDENING THE TAXPAYERS OF CALIFORNIA.

THE ESSENTIAL ISSUE BEFORE YOU TODAY IS WHETHER OR NOT TO GRANT PROFESSIONAL SPORTS LEAGUES AN EXEMPTION FROM THE ANTI-TRUST LAWS WHICH CURRENTLY GOVERN THEIR BUSINESSES, AS ALL OTHER BUSINESSES IN THIS COUNTRY. WHILE THERE ARE OTHER ONEROUS IONS OF THE THREE MEASURES PENDING BEFORE YOU, THIS PROVISION, PARTICULARLY IS EMBODIED IN S-259, IS WHY I ASKED TO BE EXCUSED FROM LEGISLATIVE SESSION ACRAMENTO TO FLY HERE AND TESTIFY TODAY.

AS ELECTED OFFICIALS, WE ARE ALL TOO FAMILIAR WITH THE PRESSURE THAT A SPECIAL INTEREST GROUP CAN BRING TO BEAR ON BEHALF OF SELFISH LEGISLATION WHICH IS ALWAYS COUCHED AS BEING IN THE PUBLIC INTEREST. DESPITE THE STATED PURPOSE OF S-259, IT IS A SHAM WHICH IN REALITY WOULD OFFER NO PROTECTION TO COMMUNITIES BUT WOULD IN FACT REMOVE THE LAST RECOURSE MUNICIPALITIES WOULD HAVE AGAINST THE ALREADY TOO-FORMIDABLE POWER OF PROFESSIONAL SPORTS LEAGUES. THAT RECOURSE IS THE FULL APPLICATION OF OUR NATIONS ANTI-TRUST LAWS.

WHILE I WOULD NOT PRESUME TO LECTURE THIS AUGUST BODY ON THE HISTORY OF ANTI-TRUST LAWS, LET US REMIND OURSELVES OF ONE THING. THE MOST IMPORTANT REASON FOR THE CREATION AND EXISTANCE OF ANTI-TRUST LAWS IS TO PROTECT AND DEFEND THE INTEGRITY OF THE FREE ENTERPRISE SYSTEM. WE AT THE COLISEUM COMMISSION BELIEVE THE GREATEST PUBLIC INTEREST WILL BE SERVED BY THE UNFETTERED RELIANCE ON THAT SYSTEM AND A COMPETITIVE MARKETPLACE FOR THE OPERATION OF PRO SPORTS LEAGUES. FREE ENTERPRISE HAS WORKED BOTH TO THE BENEFIT, AND TO THE DETRIMENT OF THE LOS ANGELES COLISEUM COMPLEX, BUT THE IMPORTANT THING IS THAT IT HAS WORKED. WE LOST A PRO FOOTBALL TENANT, THE LOS ANGELES RAMS, TO ANOTHER STADIUM THAT MADE THEM A BETTER DEAL; BUT THEN WE REPLACED OUR FORMER TENANT WITH THE LOS ANGELES RAIDERS BY COMPETING ACTIVELY IN THE MARKETPLACE.

THE SAME USE OF OUR FREE ECONOMIC SYSTEM WAS EMPLOYED IN OUR SUCCESSFUL EFFORT TO RETURN PROFESSIONAL BASKETBALL TO THE LOS ANGELES SPORTS ARENA. SIXTEEN YEARS AGO OUR BASKETBALL TENANT, THE LOS ANGELES LAKERS, ELECTED TO LEAVE OUR FACILITY AND BUILD THEIR OWN ARENA. FINALLY, WE WERE ABLE TO REPLACE THEM WITH THE LOS ANGELES CLIPPERS AFTER STRENUOUSLY COMPETING IN THE FREE MARKETPLACE FOR THEIR BUSINESS. THIS IS THE ESSENCE OF FREE ENTERPRISE.

IN BOTH INSTANCES, HOWEVER, WE HAVE BEEN CHALLENGED AND THE FREE ENTERPRISE SYSTEM HAS BEEN CHALLENGED BY, FIRST, THE NATIONAL FOOTBALL LEAGUE AND, NOW, THE NATIONAL BASKETBALL ASSOCIATION. ON WHAT GROUNDS DID THE PROFESSIONAL SPORTS LEAGUES CHALLENGE THOSE MOVES? SENATORS, THEY WOULD HAVE YOU BELIEVE THEIR PRESS RELEASES WHICH ALLEGE GREAT CONCERN AND SENSITIVITY TO COMMUNITY INTEREST AND FAN LOYALTY. LET US EXAMINE THE CREDITABILITY OF THOSE ASSERTIONS BY LOOKING AT THE RECORD.

BY THE ADMISSION OF THE N.F.L. COMMISSIONER PETE ROZELLE HIMSELF, AT OUR RECENT SUCCESSFUL ANTI-TRUST TRIAL, THE N.F.L. OWNERS WERE NOT OPPOSED TO THE MOVE OF THE RAIDERS TO LOS ANGELES BECAUSE OF CONCERN FOR THE FANS OF OAKLAND, BUT ONLY BECAUSE BY HAVING THE RAIDERS IN LOS ANGELES IT WOULD DEPRIVE THE LEAGUE OF MILLIONS OF DOLLARS FROM THE SALE OF AN EXPANSION FRANCHISE IN LOS ANGELES. COMMISSIONER ROZELLE AND HIS N.F.L. OWNERS ARE EXPERT AT GIVING TESTIMONY TO THE CONCEPT OF COMMUNITY INTEREST BUT

WHEN ONE LOOKS AT THE RECORD ONE FINDS A TOTAL DISREGARD ON THEIR PART FOR COMMUNITY INTERESTS AND ONLY CONCERN WITH THE ECONOMIC GAIN FOR THE LEAGUE ITSELF.

THEN WE HAVE THE RECENT CASE OF THE N.B.A.'S KANSAS CITY KINGS MOVING NOT JUST 120 MILES NORTHWARD AS THE CLIPPERS DID FROM SAN DIEGO TO LOS ANGELES, BUT HALFWAY ACROSS THE COUNTRY TO SACRAMENTO, CALIFORNIA. UNLIKE THE CLIPPERS MOVE TO LOS ANGELES, THIS KANSAS CITY MOVE RECEIVED THE BLESSINGS OF THE NATIONAL BASKETBALL ASSOCIATION. ONE MIGHT WONDER HOW THAT BLESSING CAME ABOUT? THE COST OF THAT BLESSING WAS AN $850,000.00 TRIBUTE PAYMENT TO THE GOLDEN STATE WARRIORS WHO PLAY THEIR HOME BASKETBALL GAMES 75 MILES AWAY IN OAKLAND, CALIFORNIA. ACCORDING TO DEPOSITION TESTIMONY OF N.B.A. COMMISSIONER DAVID STERN, THE WARRIORS ORIGINALLY WANTED 3 MILLION DOLLARS BEFORE THEY WOULD EVEN CONSIDER THE POSSIBILITY OF A COMPETING BUSINESS LOCATED IN SACRAMENTO. THIS RANSOM WAS ORIGINALLY REPUGNANT TO THE CONSORTIUM ATTEMPTING TO MOVE THE KINGS FROM KANSAS CITY, BUT WITH THE ASSISTANCE OF COMMISSIONER STERN, A DEAL WAS FINALLY WORKED OUT FOR $850,000.00, CLEVERLY DISGUISED AS EXHIBITION GAME FEES AND SEASON TICKET PURCHASES. THE NOW SACRAMENTO KINGS WILL PAY THE WARRIORS $100,000.00 PER GAME FOR FIVE EXHIBITION GAMES TO TRAVEL 75 MILES SOUTHWARD FOR THE CONTESTS. THIS IS AN ABSURD FEE, ESPECIALLY CONSIDERING THE WARRIORS STANDING IN THE N.B.A., HAVING FINISHED LAST SEASON WITH THE WORST RECORD IN PROFESSIONAL BASKETBALL. AS A POINT OF COMPARISON, THE LOS ANGELES CLIPPERS PAID THE WARRIORS APPROXIMATELY $7,000.00 FOR AN EXHIBITION CONTEST IN LOS ANGELES LAST YEAR.

AS THE ATTACHED DEPOSITION TRANSCRIPT INDICATES, THE MAJOR CONCERN THE N.B.A. OWNERS AND COMMISSIONER DAVID STERN HAD WERE NOT FOR FAN OR COMMUNITY LOYALTY (KANSAS CITY RECEIVED NO BENEFIT FROM THIS DEAL), BUT THEIR GOAL WAS SOLELY TO EXTRACT MONEY FOR THIS MARKET. BY WHAT RIGHT DO THESE FEW OWNERS OF PRO SPORTS FRANCHISES HAVE TO ARROGANTLY SLICE UP PIECES OF THIS COUNTRY INTO THEIR OWN PRIVATE TERRITORIES FOR THEIR OWN SELF AGGRANDIZEMENT. LIKE NAPOLEON CARVING UP PIECES OF CONQUERED EUROPE AND DISTRIBUTING THEM TO HIS MARSHALLS, THESE PRO SPORTS LEAGUES HAVE DONE THE SAME FOR YEARS WITH COMMUNITIES THROUGHOUT THE UNITED STATES AND NOW WANT CONGRESS TO SANCTION THIS BLATANT VIOLATION OF OUR FREE MARKET SYSTEM.

THE PROPOSED LEGISLATION WOULD GIVE PROFESSIONAL SPORTS LEAGUES COMPLETE AND UNREVIEWABLE POWER TO DECIDE WHETHER A TEAM CAN MOVE. TO THINK THAT THIS POWER WOULD BE DISPASSIONATELY EXERCISED FOR THE BENEFIT OF COMMUNITIES IS NAIVE.

IN THE PAST, SEVERAL NATIONAL FOOTBALL LEAGUE TEAMS, WITH THE COOPERATION OF

COMMISSIONER PETE ROZELLE, HAVE NOT BEEN ABOVE USING THE THREAT OF RELOCATION AS A BARGAINING WEDGE AGAINST THEIR CURRENT HOME STADIUMS. THE MINNESOTA VIKING SITUATION IS THE MOST GLARING EXAMPLE OF THIS TYPE OF EXTORTION-LIKE PRESSURE. THE VIKINGS, EVEN WITH THE THREAT OF A MOVE TO LOS ANGELES TO REPLACE THE RAMS, WERE NOT DOING VERY WELL IN GETTING THE MINNESOTA LEGISLATURE TO COME UP WITH 55 MILLION DOLLARS FOR A NEW STADIUM. IT SEEMED THAT THE MINNESOTA LEGISLATURE BELIEVED N.F.L. ASSERTIONS THAT TEAMS WITH LOCAL SUPPORT WOULD NOT BE MOVED OUT OF EXISTING LOCATIONS. SO WHY SHOULD THEY USE TAXPAYER MONEY IN THESE TIMES OF FISCAL CRISES TO BUILD A FANCY NEW STADIUM? ROZELLE HOWEVER, QUICKLY SET STRAIGHT THOSE LEGISLATORS WHO WERE NAIVE ENOUGH TO THINK THAT HIS FAN LOYALTY RHETORIC WAS SINCERE. AFTER A LEAGUE MEETING IN HAWAII, DURING WHICH THE VIKING'S PROBLEM WITH THEIR RECALCITRANT LEGISLATURE WAS DISCUSSED, MR. ROZELLE HELD A NEWS CONFERENCE AT WHICH HE TOLD THE MINNESOTA LEGISLATORS THAT THEY SHOULD NOT BELIEVE HE WOULD STOP A VIKINGS' MOVE, EVEN IF THE FANS LOYALLY FILLED THE EXISTING STADIUM. IN OTHER WORDS "BUILD THAT DOMED STADIUM OR WE'LL TAKE THE VIKINGS AWAY FROM YOU". THE LEGISLATORS IN MINNESOTA GOT THE MESSAGE AND THE VIKINGS GOT THEIR NEW STADIUM. THAT'S THE LEAGUE COMMITTMENT TO FAN LOYALTY AND COMMUNITY SUPPORT.

FAN LOYALTY IS NOTHING MORE THAN CUSTOMER LOYALTY FOR A PARTICULAR BRAND OR SERVICE AND IS FOSTERED AND DEVELOPED THROUGH TEAM PERFORMANCE, MARKETING, PUBLIC RELATIONS, ADVERTISING, AND COMMUNITY RELATIONS. IF IT HAS ANY PROPRIETARY INTERESTS, THOSE INTERESTS MUST LIE WITH THE ENTITY THAT DEVELOPED THE LOYALTY IN THE FIRST PLACE - THE INDIVIDUAL SPORTS TEAM. AND IF THAT TEAM BELIEVES IT CAN RUN A MORE PROFITABLE BUSINESS IN A NEW LOCATION, UNDER OUR FREE ENTERPRISE SYSTEM IT SHOULD BE PERMITTED WITHOUT INTERFERENCE FROM OTHER ECONOMIC COMPETITORS.

THE PROPOSED LEGISLATION IS INSIDIOUS BECAUSE IT PURPORTS TO BE MERE INTERNAL PRO SPORTS LEAGUE HOUSEKEEPING, BUT IT REALLY DOES SEVERE DAMAGE TO THE PUBLIC INTEREST. THE LEGISLATION WOULD PREVENT INDEPENDENT BUSINESSMEN FROM DECIDING WHERE THEY DO BUSINESS, DEPRIVING THEM OF THE MOST FUNDAMENTAL DECISION ABOUT THEIR OWN COMPANIES ALONG WITH THEIR PERSONAL PROPERTY RIGHTS. SPORTS FANS WOULD CLEARLY BE THE BIGGEST LOSERS OVER THE LONG RUN IF THE OWNERS WERE HANDCUFFED BY THIS LEGISLATION.

THE JUSTIFICATION PRO SPORTS LEAGUES OFFER FOR ITS PROPOSED EXEMPTION IS THAT PRO SPORTS ARE SOME SORT OF PARTNERSHIP, WHICH IS ENTITLED TO DECIDE WHERE ITS SO-CALLED PARTNERS PLAY. THIS "PARTNERSHIP" GAG IS WEARING THIN. IT IS TROTTED OUT BY THE N.F.L., FOR EXAMPLE TO DEFEND LAWSUITS, BUT WHEN THE OWNERS ARE NOT TESTIFYING IN COURT, THEY COMPETE VIGOROUSLY WITH EACH OTHER BOTH ON AND OFF THE PLAYING FIELD.

IN A LINE OF UNBROKEN DECISIONS THE COURTS HAVE CONSISTENTLY HELD THAT THE N.F.L. IS AN ASSOCIATION OF 28 INDEPENDENT COMPETITORS. THERE HAS BEEN NO CONFUSION ON THE PART OF THE COURTS ABOUT THIS ISSUE, AND THE N.F.L. HAS BEEN ON NOTICE FOR SOME TIME THAT ITS POSITION HAS NO SUPPORT IN CASE LAW. PROFESSIONAL SPORTS LEAGUES CONSIST OF SEPARATE FRANCHISES: EACH CLUB IS SEPARATELY OWNED AND MANAGED; EACH CLUB IS A SEPARATE CORPORATION OR PARTNERSHIP; THE FRANCHISES DO NOT SHARE ANY OF THEIR PROFITS OR LOSSES; NOR DO THEY DIVIDE THEIR OPERATING EXPENSES; INDIVIDUAL FRANCHISES DO NOT SHARE THEIR BOOKS AND RECORDS WITH EACH OTHER (IN FACT, THEY CONSIDER THAT INFORMATION TO BE HIGHLY CONFIDENTIAL); EACH TEAM RUNS ITS OWN AFFAIRS; AND EVERY TEAM MAKES ITS OWN DECISIONS WITH RESPECT TO TICKET PRICES, PLAYER ACQUISITIONS, PLAYER SALARIES, STADIUM LEASE TERMS, RADIO AND PRE-SEASON TELEVISION CONTRACTS AND THE HIRING OF FRONT OFFICE PERSONNEL.

TAKING THE FACTS AS A WHOLE IT IS PLAIN TO SEE THAT EACH FRANCHISE IS A SEPARATE BUSINESS ENTITY. IT IS SEPARATELY OWNED AND SEPARATELY RUN. INDEED, IT IS CURIOUS THAT ANYONE WOULD ARGUE THAT THE WASHINGTON REDSKINS ARE ANYTHING BUT AN INDEPENDENT BUSINESS. DOES ANYONE REALLY THINK THAT MEN LIKE JACK KENT COOKE ARE SOME SORT OF BRANCH MANAGERS OR HIRED HANDS WHO WORK FOR THE LEAGUE OFFICE?

THE ANTI-TRUST LAWS DO NOT POSE A THREAT TO THE SURVIVAL OR BASIC FUNCTIONS OF PROFESSIONAL SPORTS LEAGUES. IT IS OBVIOUSLY NECESSARY FOR THE TEAMS TO COOPERATE IN ADOPTING PLAYING RULES, SCHEDULING GAMES, HIRING REFEREES AND SO FORTH. NONE OF THESE ESSENTIAL FUNCTIONS HAS ANY ADVERSE IMPLICATIONS FOR ECONOMIC COMPETITION AND THEREFORE NONE COULD BE THE SUBJECT OF AN ANTI-TRUST CHALLENGE. THE CLAIM THAT THE ANTI-TRUST LAWS CAN BE USED TO ATTACK THE FUNDAMENTAL OPERATIONS OF SPORTS LEAGUES IS A GROSS MISREADING OF THOSE LAWS.

THE POSITION OF THE LOS ANGELES COLISEUM COMMISSION IS SIMPLY THAT NO SPECIAL INTEREST LEGISLATION IS NEEDED TO DEFINE A SPORTS LEAGUE'S STATUS UNDER THE ANTI-TRUST LAWS OR TO CONTROL THE OCCASIONAL MOVEMENT OF SPORTS FRANCHISES. THE ANTI-TRUST LAWS, CONTRARY TO PRO SPORTS LEAGUES ANGUISHED CRIES, HAVE PROVEN TO BE FAIR AND FLEXIBLE TOOLS THROUGH WHICH THE COURTS HAVE APPLIED THE FUNDAMENTAL POLICIES OF COMPETITION AND FREE ENTERPRISE TO THE SPORTS INDUSTRY. THERE IS NOTHING MYSTERIOUS OR OVERLY COMPLICATED ABOUT THE WAY THE ANTI-TRUST LAWS APPLY TO A SPORTS LEAGUE. THE OWNERS COULD EASILY MANAGE THEIR AFFAIRS SO AS TO AVOID RUNNING AFOUL OF THE ANTI-TRUST LAWS. IF THEY ARE CHRONIC RECIDIVISTS, AND INDEED THEY ARE, IT IS ONLY BECAUSE OF THEIR ARROGANT AND WILLFUL INSISTANCE THAT THEY SHOULD BE ABOVE THE LAW.

PASSAGE OF THESE MEASURES WOULD BESTOW UPON PROFESSIONAL SPORTS LEAGUES UNILATERAL POWER TO MAKE DECISIONS AS TO FRANCHISE LOCATIONS AND MOVEMENTS, AND SUCH POWER COULD BE WIELDED AGAINST COMMUNITIES UNMERCIFULLY. IF CONGRESS ENDORSES THESE MEASURES, THE COURTS WILL BE POWERLESS TO DEFLECT THE POWER PROFESSIONAL SPORTS LEAGUES CAN UNLEASH AGAINST MUNICIPALITIES, STADIUMS, PLAYERS, OTHER LEAGUES, NEWSPAPERS AND BROADCASTERS OR EVEN AGAINST ONE OF ITS OWN TEAM MEMBERS. THE LEAGUES ARE EXPERT AT GIVING LIP SERVICE TO THEIR CONCERN FOR COMMUNITIES AND FAN INTEREST AND STRONGLY SUPPORT THESE MEASURES USING ALTRUISTIC RHETORIC. IN REALITY, THEY ARE SEEKING CONGRESSIONAL IMMUNITY FROM THE LAW IN ORDER TO CONTINUE THEIR PRACTICE OF EXTRACTING TRIBUTE PAYMENTS FROM INDIVIDUAL TEAM OWNERS TO CONDUCT BUSINESS IN SPECIFIC MARKETS.

THE UNENCUMBERED FUNCTIONING OF OUR ECONOMIC SYSTEM IS ONE OF THE STRENGTHS OF THIS NATION. WE BELIEVE IT SHOULD BE ALLOWED TO FUNCTION WITHOUT UNNECESSARY INTERFERENCE AND WITH THE FULL APPLICATION OF OUR ANTI-TRUST LAWS TO PROFESSIONAL SPORTS LEAGUES. THESE LEAGUES WISH TO INHIBIT OUR FREE ENTERPRISE SYSTEM BY SUBSTITUTING THEMSELVES AS THE CONTROLLING ELEMENT IN THE DETERMINATION OF TEAM LOCATION AND FRANCHISE OWNERSHIP. WE BELIEVE THE PUBLIC INTEREST IS BEST SERVED BY A FREE MARKET ECONOMY AND THE LAWS OF THE UNITED STATES WHICH PROTECT THE FREE ENTERPRISE SYSTEM. WE TRUST YOU WILL CONCUR IN THIS BELIEF AND REJECT THE PENDING MEASURES.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, THANK YOU FOR YOUR TIME AND CONSIDERATION OF OUR POSITION.

VOLUME 16

(SECOND TRIAL)

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

- - -

HONORABLE HARRY PREGERSON, JUDGE PRESIDING

- - -

LOS ANGELES MEMORIAL COLISEUM COMMISSION,
Plaintiff,

vs.

NATIONAL FOOTBALL LEAGUE, an unincorporated association, et al.,
Defendants.

Civil No. 78-3523-HP

COPY

REPORTERS' TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, April 6, 1982

M. LENOIR EDDY, CSR
ROBERT E. KILLION, CSR
ROBERT F. STARK, CSR
Official Reporters
417 U. S. Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 628-2530

is placing an expansion team in Los Angeles, for example, likely to affect the stream of revenue, I thought that was one of the four business reasons you gave Mr. Lynch, --

A The uncertainty, yes.

Q -- why you would not want to have a second team like the Raiders move down here or an expansion team.

Is that correct?

A The uncertainty of that, yes.

Q So that means that because of that uncertainty, we're never likely to get an expansion team?

A No. I think I gave the reasons the various clubs had for voting as they did. And some of them mentioned the television. I don't say all of them. And I don't say it was proven to be a major factor. But the uncertainty of the television situation did trouble some of them.

Q So we would say television of the factors was mentioned by a few people and it was not a very overpowering reason in your view?

A It was not expressed specifically by a large number, by, say, you know, eighteen or twenty of the clubs. It was mentioned by some of them.

Q Now, another factor you mentioned was that the franchise down in Los Angeles, should the League ever decide to award it to somebody, would be worth money, is that correct?

A Yes.

Q And traditionally that money is taken and divided equally among all the club owners?

A Yes.

Q Now let me see if I understand this. Is it correct in your view that the franchise here in Los Angeles is worth more money than the franchise would be in Oakland?

A I think a franchise in Los Angeles would be worth more than Oakland and -- a new franchise in Oakland and a lot of other cities, yes, because of the size of the population, the fact that there are a number of people here with wealth that could afford a franchise, and also the fact that a number of people would like to live here.

Q This is a pretty good place to play football is what you're saying.

A You could certainly find a number of owners who would like to own a football team here.

Q Now, if Mr. Davis, now, the Oakland Raiders get to come from Oakland to Los Angeles, what in effect happens economically, if I understand you correctly, is that they get a franchise worth more money than the one they're leaving.

A I think that's true.

Q And if the League wants to then turn around and

Rozelle - Redirect by Blecher

sell the Oakland franchise to a new team, they would take less money in to divide among themselves than if they held the Los Angeles one and sold that later.

A I think that Los Angeles would command a very good price for an expansion franchise. Perhaps as much as any city in the country.

Q And the point of what you're saying to Mr. Lynch is that the Oakland Raiders would get a big benefit by moving their inferiorly-priced or lower-priced property franchise from Oakland to Los Angeles, and you fellows, the other 27 of you in the League, would wind up with a franchise worth less to sell and distribute among yourselves?

A I think it's --

Q Is that right or wrong?

A It's right. May I explain?

I think that it's a corporate right of all 28 clubs, if all of them have contributed to the growth, the popularity, of the National Football League, they're entitled to equally share the benefits. That's what I was saying.

Q And the way this works out, then, is under 4.3 the 22 or 21 owners actually get to decide whether Davis can pick up his business and move it to a better location?

A He can move by a three-quarters vote if he justifies the move, sir.

Q Or they can decide that he has to stay in the location that's worth less money, even though he has, because his lease expired, an opportunity to better himself?

A That's the way I look at it, right.

MR. BLECHER: Okay. Thank you, sir.

REDIRECT EXAMINATION

BY MR. JOSEPH L. ALIOTO:

Q Mr. Rozelle, right on the face of 4.3, if you look at it, just on its face, the League owners can vote as follows, can they not: I am voting against the Oakland Raiders because we want that franchise for ourselves and divvy up the money among ourselves?

If they voted for that reason, that would be perfectly legal under 4.3, right?

A I've never heard of anything like that happening, but it would be legal under 4.3. They have the right to their vote.

Q In other words, as interpreter of the Constitution, you are saying that on its face, 4.3 would enable eight persons to say we want to divvy that money up among ourselves, and we don't want Al Davis to move, even though all of the requirements of travel, television, scheduling, would be met? And they could do that, right on the face of 4.3, right?

A That is if we later decided to expand to Los Angeles.

Q Doesn't that look like a conflict of interest to you?

A I think that 28 clubs in the National League helped enhance the League's popularity, and they have a right, they have a corporate right, to share in any benefits that will come to the League through any location and expanding to any location.

Q Then you are saying that under 4.3 these owners have the right to vote their pocketbook as against Davis' pocketbook, and they don't have to meet any other standard than that if they wanted to, right?

A Yes. But Davis would share equally. He would share with all the other clubs in the League the same amount of money from that sale.

Q You would agree with me, wouldn't you, Mr. Rozelle, that the L.A. franchise is worth at least $20 million more than a new franchise in Oakland? You would agree with that, wouldn't you?

A I don't know what a franchise is worth today. You would have to see a sale to determine that. I don't know.

Q Mr. Rozelle, you have just said in answer to Mr. Lynch's question and Mr. Blecher's question that the Los Angeles franchise is worth a lot more than the Oakland franchise, assuming they could be both new franchises, haven't you just said that?

A Yes. Both expansion franchises, correct.

Q In your sales that's ever been made of a franchise or of a partial franchise or an owner's interest in a franchise, this has to come right through your hands, that's correct, is it not, since you've been the Commissioner?

A We have received the request for a sale. Yes. We received it and presented it to the League for approval.

Q And you spoke earlier of the price of a New Orleans franchise, the price of an Atlanta franchise. You already testified about the price of the Tampa Bay franchise, the Seattle franchise, and recently the Denver franchise.

Now, on the basis of all that experience, can't you put a figure on the differential you've admittedly testified to between the value of Los Angeles on the one side and the value of Oakland on the other side? Can't you put some type of a differential to approximate it? Is it between ten and twenty million dollars, for example?

A I would be guessing if I did, Mr. Alioto.

Q I'm not asking you to guess. I'm asking you to give us your expert opinion on the basis of the total experience you have had in this industry. That's what I'm asking you to do.

In other words, when you say there is a differential, I'm simply trying to get you to give us some range of that difference.

A With the new television contract, I really would have to have a more recent sale. I have said that I think an expansion franchise in Los Angeles would be worth more than an expansion franchise in Oakland.

Q How much more?

A It would be a wild guess.

Q What's your wild guess as an expert?

MR. MORGAN: I will object to his wild guess. It calls for speculation.

MR. JOSEPH L. ALIOTO: All right.

THE COURT: We don't want any wild guesses out of experts.

BY MR. JOSEPH L. ALIOTO:

Q Give me your best estimate, your best expert estimate, as to what that differential would be.

A I tell you it would be more, but it would be just a wild guess.

Q All right. We can agree, then, it would be more.

A Expansion franchise in Oakland as against an expansion franchise in Los Angeles, the Los Angeles franchise would be worth more.

Q Now, do you have any information from any source whatsoever that part of the reason for turning down Al Davis on the move from Oakland to Los Angeles is because you folks wanted the new franchise for yourself?

A No. Because the decision hadn't even been made to

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

-----------------------------------x

NATIONAL BASKETBALL ASSOCIATION,

Plaintiff,

-against-

Civil No. 84-1430E

SDC BASKETBALL CLUB, INC. and LOS ANGELES MEMORIAL COLISEUM COMMISSION,

Defendants.

-----------------------------------x

Continued deposition of DAVID J. STERN, taken by Defendants, pursuant to adjournment, at the offices of Proskauer Rose Goetz & Mendelsohn, Esqs., 300 Park Avenue, New York, New York, on May 14, 1985, at 10:20 a.m., before Jack Finz, a Certified Shorthand Reporter and Notary Public within and for the State of New York.

rivalry would be natural?

A. Yes, because the teams were in geographic proximity, and that it's a terrific area.

Q. In the July meeting, did he tell you why he wanted to leave Kansas City?

A. Yes. I think he indicated that they had been marketing quite heavily, making wise trades and good personnel decisions, lived up to all their obligations, done the right thing, and they were having a hell of a time making money. And he felt that there was a right way and a wrong way to do things, and he wanted to alert us at the earliest possible time and get this thing in a mode so he could seek the approval of his partners for the relocation to Sacramento.

Q. Did he say anything else about why he wanted to pull the Kings out of Kansas City?

MR. MISHKIN: I object to the form of the question.

A. I don't recall.

Q. At the July [1984] meeting, did Mr. Lukenbill or Mr. Axelson refer to the possibility that the Kings would pay the Warriors money in connection with the move to Sacramento?

A. No. That's the one thing that they said they wouldn't do.

Q. At the July meeting?

A. I think so. I think so. Gregg said that he wanted to work together with Franklin, that he knew, sort of, or concurred in my sense that, given the presentation that he would make in terms of a case, that he was going to get consent to move, and I did nothing to disabuse him of that notion, but that he really didn't want Golden State to be unhappy, and that he was prepared to work with them. In fact, he said something like, as I now recall, if they were having trouble with their lease negotiations, he would talk to Franklin and perhaps help to build him a building, to help him with his negotiations.

But I can remember him saying that he wants to work with Franklin, but he's not going to pay him a cent of -- I don't remember what the word was that he used, whether it was ransom or indemnity or something like that, which was out of the question.

Q. Did he tell you at the July meeting

that there had been any discussions between the Warriors and the Kings about the possible payment of monies from the Kings to the Warriors?

MR. MISHKIN: Can I have that read back.

(The pending question was read.)

A. I knew at some time that there had been a discussion, but I can't place it in time, Mr. Daniels. I don't know whether it was before or after.

Q. The July meeting?

A. Yes. I just don't recall.

Q. Who was it that you learned that from?

A. I don't remember the sequence. I know that either Gregg or someone called up and said, "Who do I talk to at Golden State?"

And I said, "I don't know. Let us think about it and we will tell you who." I think I called back and said, "Well, Luther Avery is the person," or maybe Russ called back and said, "Luther Avery is the person."

And then I subsequently learned, but I don't know whether it was from Joe or Gregg or Russ or Luther, for that matter, that Gregg called up Luther and Luther said, "Oh, yes, we would like to help, if you pay us $3 million," which ended the conversation and really, at least for some period of time, ended any efforts by us to comply with Gregg's request to begin a dialogue with Golden State.

Q. When Mr. Lukenbill called you and asked who to talk to at Golden State, did he tell you what it was he wanted to talk to him about?

A. Yes, about that general subject of working together to develop basketball in that area. I mean, it was clear, he wanted to -- he didn't want Sacramento going into that area to be a negative to Golden State, and he was concerned that they were going to be unhappy, and then when he got there that their unhappiness would somehow put a damper on the entire marketing operation of both teams.

Q. Did Mr. Lukenbill report back to you on his telephone conversation with Mr. Avery?

A. I think he may have. I think so. Somebody did. It may have been Gregg.

Q. Do you remember what was said?

A. It was something very unflattering to

Golden State, something like they should be paying him, and that they must be crazy, and that he may call upon me later on to help, or something along those lines, stay ready if he calls, but he was not going to pay a cent of indemnity to them, and that he couldn't understand who was running their team or how it was being run.

Q. What did you say?

A. I think I indicated I was shocked that they had asked him for that.

Q. What is "that"?

A. $3 million, or some sum of money like that, and that they apparently misunderstood his intentions, but that let me know if I could be helpful.

Q. Did you say anything else in that conversation?

A. I don't recall.

Q. Did you ever have a conversation with Mr. Avery about what Golden State wanted from the Kings?

A. I had some -- yes, I had conversations with Mr. Avery.

Q. Telephone?

A. Yes.

Q. Was there one call or more than one in which you discussed --

A. I think I discussed it with Luther on several occasions.

Q. What did he tell you about what he wanted from the Kings?

A. I think he said that he wanted -- I think he told me that they wanted $3 million.

Q. Didn't he originally mention a much higher figure to you?

A. No, not that I recall. It's possible, but I don't recall that.

Q. What else did he say?

A. Oh, many, many things. He said something like -- well, first Luther indicated that the possibility that they were coming was having an adverse impact on the things in which he was involved, which were dealing with the banks on behalf of Golden State, which was struggling, and dealing with prospective purchasers, who were staying away, against the possibility that there would be a second team there that would have an impact on an already struggling Golden State team.

Q. What else did he say?

A. Whatever number he mentioned, I said, "Luther, they are simply not interested in paying you money." I think I said something like, "To make Franklin happy, or for appearance' sake, for your appearance's sake, there is a difference between $3 million in cash and if you wanted $3 million over a hundred years, or 30 years, or I don't know, something like that, but there's not going to be anything like that." And I said, "Obviously, you know --" I was talking now to Luther -- "that you're going to vote for it, and there's going to be a team there, so you should be more receptive to what Gregg is trying to do.

Q. What did he say in response to that?

A. Well, he told me that he was advising Franklin to vote for the move. He told me the Warriors always voted for teams to move elsewhere, and he was going to do it. But that he honestly felt that there was an impact that had a negative effect on their ability to succeed in terms of perhaps their loss of television revenues from the Sacramento area.

I'm having trouble separating out conversations, but at some point I said to him, "Well, Luther, the committee is going to want to -- when the committee studies this, they are going to want to know whether the market will support two teams, and if there really is an impact on your radio and TV, then you should educate yourself and be prepared to speak about it, on what the impact is in terms of the ability of the marketplace to support two teams."

I remember that because then, unsolicited, about a week later or two weeks later I got a memo from Hal Childs to either me or Luther Avery, marked "Re: Litigation," which purported to detail all of the ways in which the move would impact. I then had another conversation with Luther.

Again, each time as this was going along -- there were many conversations back and forth so I can't be specific as to which came when, where I said to him -- or he said, "Well, how about, in light of the fact that we are going to have an impact on television, how about that they would pay us a percentage of their television revenues that they got from Sacramento," or radio revenues, or something like that.

Q. What did you say to that suggestion?

A. I was derisive. I can remember at some point in the conversation saying, "Luther, listen. Don't write. Don't talk. Stop writing. Stop talking. Just listen. And I'm trying to be helpful. Lukenbill has asked me to call you. If something will fly, let me know." Because I was sort of acting as an intermediary.

Gregg was pushing at me, saying, "I want to do something with Franklin." And I was concerned, from a PR perspective, because it was clear to me that Golden State was going to put in -- this was now me, this is my thought process -- Golden State was going to put in these rather inartfully-taken surveys, that purported to show great damage. And then Lukenbill was going to be compelled to show why damage -- you know, he was going to take the position that any damage that Golden State suffered would be self-inflicted, and as a result Luther was going to vote for it anyway, except it was going to be viewed as a potential, somehow, one more black mark against the Warriors, and it was, I thought, an unmitigated public relations disaster was looming.

So I had my own incentive, apart from Gregg, that if Gregg wanted to secure the Warriors' support, public support, I was very much hopeful that that could be achieved.

Q. Did you take any notes of your phone conversations with Mr. Avery?

A. No.

Q. Did he tell you that he was taking notes of those conversations?

A. No.

Q. Did you have reason to believe that he was?

MR. MISHKIN: To the extent any knowledge on that subject comes from counsel, you can't answer it.

A. I knew that Luther was a -- in my previous role as counsel, and this is the problem in my head, that Luther used to come to board meetings and take very copious notes, almost sometimes to the exclusion of listening, often to the exclusion of listening.

At the same time I was having conversations with Lukenbill. And there evolved from these discussions an arrangement between the two teams, which in part was similar in concept to what Gregg had already done with Golden State last year, I guess, or perhaps it was this year -- this year, in that they had bought tickets to Kings games in Golden State, and brought down groups of Sacramento fans to those games, and they agreed to do that for some additional years.

And, additionally, Golden State agreed to come and play exhibition games in Sacramento, and Sacramento agreed to play exhibition games at Golden State.

Q. And the Kings agreed to pay the Warriors $100,000 per exhibition game for five years?

A. Yes.

Q. Did you have an understanding of what period of time those games would be played over?

A. Yes. I think it was starting -- I think maybe starting the year after next, going out five years.

Q. So that would be one game a season?

A. Right, it was one game a season.

Q. Did Mr. Lukenbill ever tell you that he had asked Mr. Avery whether the payment of money to the Warriors would satisfy them?

A. No.

Q. Who was it who told you about the arrangement that the Kings and the Warriors ultimately worked out?

A. I was there when they worked it out.

Q. You were there at the birth?

A. Yes.

Q. Was there a meeting?

A. There was a conference call.

Q. Who was on that call?

A. I think it was Luther, Franklin, Gregg, Russ and myself.

Q. Did you take any notes of that call?

A. No, I didn't.

Q. Did Mr. Granik?

A. I think he might have, yes. I believe he did.

I'm summarizing. I mean, there were many, many phone conversations back and forth. But I remember a final one.

Q. There was a final conference call?

A. A final one, where I said, "Okay, guys, you've been talking about this. Now we are going to have it in one final phone call, and we can go about other things we have to do in the office."

Q. At the time that call was made, had there been agreement in principle to the playing of exhibition games?

A. Yes, I think so.

Q. But not to the particular amount of money?

A. No, I think there was agreement to everything.

Q. So there were no negotiations back and forth in the conference call?

A. No.

Q. Everything had already been decided?

A. Well, both sides had been battering Russ and me. I only say that facetiously. There were negotiations, but we were the people who were in the middle.

Q. The go-betweens?

A. Yes. For example, Franklin I don't think was that anxious to play the exhibition games, because he felt that -- I remember his words, "We're Goliath and they're David, and we have everything to lose by playing them." I remember that particular phrase.

And then we would ask Lukenbill and Joe about the exhibition game, and I don't remember how the hundred thousand exactly came about. I think that they were going to -- their Gross for those games, certainly in later years, if they conducted it as part of their season ticket package, given their projections, was going to be substantially in excess of a hundred thousand dollars, but they wanted to cap their exposure at a hundred for those games.

Q. "They" being the Kings?

A. "They" being the Kings. And the Kings wanted to come down and play in Golden State, and in negotiations Franklin didn't want them to come.

Q. Does the league office maintain records of agreements between clubs to play exhibition games?

A. No.

Q. That's strictly a matter that is handled by the individual clubs?

A. Right. That's correct.

Q. How long did the conference call last?

A. I would say 20 minutes or so, maybe 25.

Q. Who was it who set up the call?

A. Russ. I mean, our office.

Q. Was your purpose in having the conference call to nail down a specific agreement?

MR. MISHKIN: I object to the form of the question.

A. It was to confirm the agreement that had already been reached.

Q. To your knowledge, was the agreement subsequently reduced to writing?

A. I don't know if it's been actually reduced to writing, but there's no -- I don't think it has yet been reduced to writing, but I'm pretty sure it has been confirmed by both sides. It may be by now; I just don't know.

Q. You haven't seen it?

A. No. No.

Q. In the conference call, was there any discussion about creating a document?

A. Oh, yes, it was agreed that in due course there would be a document.

OFFICERS
DEANE DANA
PRESIDENT

GILBERT W. LINDSAY
VICE PRESIDENT

JAMES F. HARDY
GENERAL MANAGER

JERRY E. NIELSEN
ASST. GENERAL MANAGER

GLENN E. MON
ASSISTANT MANAGER

SITE OF 1932 AND 1984
OLYMPICS ATHLETICS COMPETITION
OPENING & CLOSING CEREMONIES

SITE OF 1984 OLYMPICS
BOXING COMPETITION

LOS ANGELES MEMORIAL COLISEUM COMMISSION
COLISEUM, 3911 SO. FIGUEROA ST. • 747-7111 — SPORTS ARENA, 3939 S. FIGUEROA ST. • 748-6131
LOS ANGELES, CALIFORNIA 90037

STATE OF CALIFORNIA
SENATOR WILLIAM CAMPBELL
H. MATTHEW CROSSMAN
ALEXANDER HAAGEN, SR.

FRED L. REDMAN
ALTERNATE

COUNTY OF LOS ANGELES
MICHAEL ANTONOVICH
DEANE DANA
KENNETH HAHN

EDMUND EDELMAN
ALTERNATE

CITY OF LOS ANGELES
GILBERT W. LINDSAY
J. STANLEY SANDERS
WILLIAM R. ROBERTSON

ROBERT FARRELL
RICHARD J. RIORDAN
ALTERNATES

July 11, 1985

Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Thurmond:

Thank you for the opportunity to reply to the question from Senator Charles Grassley in follow-up to your recent hearings on S.172, S.298, and S.259 concerning Professional Sports Antitrust Legislation.

Senator Grassley's question, "What is the possibility of cities contracting with leagues to remain in the localities or face large liqidated damages?," presupposes a condition that does not exist. That condition is that the leagues are some single entity with the authority to dictate where its' teams are to be located.

In a line of unbroken decesions the courts have held consistently that the National Football League and other sports leagues are associations of independent competitors. Each club is a seperate corporation or partnership. The franchises do not share any of their profits or losses; nor do they divide their operating expenses. Each team runs its own affairs. A team makes its own decesions with respect to ticket prices, player acquisitions, player salaries, stadium lease terms, radio and some television contracts and the hiring of front office personnel.

Taking the facts as a whole it is plain to all that each pro sports franchise is a seperate business entity. It is seperately owned and seperately run; it keeps its own profits and files its own tax returns. This is the way the leagues are structured now and unless the leagues opted to change their internal relationships, a situation that in our view is not likey to occur, the Honorable Senator from Iowa's question bears little relationship to reality.

It is entirely possible, however, for stadium authorites to enter into long term leases with sport team tenants. This is a good business practice for any landlord to adopt and one that would protect all parties concerned. At the Coliseum Commission for example, our lease with the Los Angeles Raiders is for ten years with three five year options. We have taken a similar approach with our NBA team, the Los Angeles Clippers.

In closing let me emphasize again, that it is our belief that the best protection for fans and communities in dealings with professional sports leagues lies in the unfettered reliance in the free enterprise system and a competitive marketplace, including the full application of our nations antitrust laws to operating of professional sports leagues.

Thank you again for the opportunity to address the Committee on these measures.

Sincerely,

Senator William J. Campbell

Senator SPECTER. I would like to turn to Charles F. Rule, Acting Assistant Attorney General.

Mr. Rule, we have received your testimony. We have noted your favorable testimony to an antitrust exemption which would be limited to franchise removal and opposition to antitrust exemption for revenue sharing. And your full statement will be made a part of the record, and we regret the time experience. We would ask you to limit your testimony to the formal time period.

STATEMENT OF HON. CHARLES F. RULE, ACTING ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION

Mr. RULE. Thank you, Mr. Chairman.

It is a pleasure to be here to discuss the need for antitrust legislation in the area of professional team sports. As my prepared statement indicates, the Department would not oppose an antitrust exemption for league franchise reallocation rules. We do, however, oppose all of the bills currently under consideration by this committee because they would create additional unnecessary antitrust exemptions for other league conduct, and would create inappropriate new legal regimes to regulate the current aspects of professional sports.

As a general rule, antitrust presently does and should continue to apply to sports. The antitrust laws, we believe, currently recognize that sports are unique, that there is a need for parity to maximize fan interest, and also recognize that some conduct can harm competition and fan welfare For example, the NCAA after its restriction ended, the number of games broadcast doubled, the number of viewers increased by 10 percent, and revenues declined by 50 percent.

With regard to franchise relocation rules, a tradeoff exists between increase in welfare of fans in cities where teams have moved against loss to fans in cities from which teams move plus adverse effect on the league. Generally, leagues are likely to make the correct decision from a consumer welfare point of view.

Courts are poorly situated to second-guess league decisions. Courts should therefore not interfere in franchise relocation decisions, but should defer to the league's choice. Because of the lack of confidence in the courts' ability to perform the tradeoff, their attempts to second-guess are likely to do more harm than good. Therefore, the Department would not oppose an appropriate and narrowly drafted exemption for league franchise relocation decisions. Other exemptions for revenue pooling and selection of owners are not appropriate. Such exemptions can harm competition. For example, in the NCAA case, the court's involvement improved welfare. There are ways to determine relatively easily the net welfare effects so courts can effectively apply the antitrust laws. Therefore, exemptions are inappropriate.

Finally, the intrusive regulatory regimes envisaged by the bills are inappropriate and contrary to the positive deregulatory trend. Professional sports have become so popular. It is actually because the entrepreneurs who own teams have been able to respond to market forces which has made professional sports a triumph of capitalism. We would be unwise to ignore the importance of private decisionmaking in that success.

But the regulatory regimes that these bills would create would do just that. Moreover, they would provide a dangerous precedent for further even more harmful Federal regulation of professional sports.

Senator SPECTER. Thank you very much.

Mr. Snider, Senator Campbell, thank you.

[Prepared statement follows:]

U.S. Department of Justice

Washington, D.C. 20530

STATEMENT

OF

CHARLES F. RULE
ACTING ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Mr. Chairman and members of the Committee:

I am pleased to be here today to present the views of the Department of Justice on S. 298, S. 259, S. 172 and S. 287, all of which address perceived problems common to professional sports leagues. The Department understands the concerns that underlie these bills, and we believe that a procompetitive, non-regulatory solution to the franchise relocation problem is necessary. However, for the reasons that I will discuss in my testimony today, the Department opposes the enactment of any of these bills in their present form.

I will begin by summarizing the four bills. As a general matter, S. 298, S. 259, S. 172 and S. 287 all address professional sports franchise relocation. Three of the bills would explicitly provide an antitrust exemption for at least some agreements among a league and its teams that restrict team movement. In addition, all of the bills except S. 298 would regulate franchise relocation by creating standards or criteria that would have to be met (to the satisfaction of either the courts or an arbitration board) in order for a league-approved franchise relocation to be lawful. Some of the bills also address sports league practices other than franchise relocation. Thus, some of the bills would afford antitrust exemptions to league agreements on revenue pooling and the selection and termination of owners, and S. 287 would regulate access to publicly-owned or operated professional sports facilities and require certain sports leagues to expand.

Looking more particularly at each bill, S. 298 would create an antitrust exemption for professional basketball, football, hockey, and soccer leagues to enforce rules authorizing league members to block relocation from league-franchised home areas. Thus, a league decision to block a relocation would be exempt; a decision to allow a relocation could be challenged in court under the antitrust laws. S. 298 also would create an antitrust exemption for leagues to enforce rules for the division of revenues that "tend to promote comparable economic opportunities for the member clubs."

In contrast to S. 298, S. 259 takes a "standards approach" to franchise relocation. The bill would create an antitrust exemption for a professional sports league to enforce rules authorizing its members to block or permit relocation out of a team's home territory. In order to enforce a franchise relocation rule or agreement, a league must file it with the Secretary of Commerce, who would publish a descriptive notice in the Federal Register. Before applying the rule in a particular case, the league must "conduct proceedings" at which "interested parties" are afforded an opportunity to present oral or written testimony. S. 259 states that a league's relocation rule "shall require" that the league consider and make specific findings regarding 13 listed factors in determining whether a move is "reasonable and appropriate." 1/

1/ The "shall include" language is ambiguous, and does not indicate what happens if the relocation rule does not include the 13 factors.

The 13 factors include such things as the relocating team's profitability, the adequacy of its stadium, the extent to which the team has received unamortized public financial support, and the extent to which the team's financial problems are the fault of its owner. The league's determination whether a move is "reasonable and appropriate" could be challenged in a "neutral" federal court; if a court found that the league had not followed appropriate procedures in determining whether to block a proposed relocation, the court could, among other things, order the league to conduct additional proceedings. Finally, S. 259 would create antitrust exemptions for league rules in two other areas--revenue pooling and team ownership standards, providing that certain criteria outlined in the bill are met.

S. 172, which is limited to professional football, would make it unlawful for any team that has played its home games in a municipality for six or more years to relocate unless the team meets one of three criteria, which are similar to some of S. 259's 13 factors. A team that seeks to relocate would be required to provide notice to the local government authority. Where an owner intends "to sell the team and relocate it," the local government--or anyone selected by the local government--would have a right of first refusal to purchase the team. Alternatively, if the local government authority decided that the statutory relocation criteria were not met, it could bring a civil action to enjoin the move and seek other equitable relief and damages. S. 172 would create an antitrust exemption of uncertain scope for any agreement among teams that restricted team movement in "accordance with the [bill's] criteria."

S. 287, which applies to professional baseball, football, basketball, and hockey leagues that have been in existence for at least seven years, provides that no team may relocate unless the move is found to be "necessary and appropriate" by both its league and an ad hoc, three-person arbitration board. Both the league and the board would have to consider nine criteria listed in the bill, which are similar to those in S. 259 and S. 172. If the board found relocation to be "necessary and appropriate," it would then consider whether any offer that would retain the team in its community had a value greater than or equal to the proposed relocation; if so, it would disapprove the relocation. The availability and scope of judicial review of the board's decision are unclear. While S. 287's "regulatory" approach appears to displace the antitrust laws from whatever application to franchise relocations they otherwise would have, the bill does not contain an explicit antitrust exemption for franchise relocation rules.

S. 287 does, however, provide that the antitrust laws "shall not apply" to an agreement among the members of any professional sports league to require the members to share revenues generated by television contracts. This provision is intended to resolve any possible ambiguity regarding the existing television pooling provision in 15 U.S.C. 1291. 2/ In addition, S. 287 mandates that each publicly-owned or operated professional sports facility be available for use by all professional teams "on fair and reasonable terms and without unfair discrimination," under standards described in the bill. Finally, S. 287 would require Major League Baseball and the NFL either to expand in a specified manner or be deemed to have violated section 2 of the Sherman Act.

* * *

These bills raise a number of important issues. Today, I want to address two of those: first, whether an antitrust immunity is appropriate for some sports league rules; and second, whether the antitrust laws should be supplanted by some alternative legal regime that balances interests in addition to, or other than, those underlying the antitrust laws in evaluating a league's decision to block franchise relocations.

With the exceptions of Major League Baseball, league sales of broadcast television rights, and the 1966 merger of NFL and AFL, professional sports league practices are subject to the antitrust laws. Current law requires that the courts apply antitrust rules to sports leagues in a manner that accommodates the unique characteristics of professional team sports. An important characteristic to which antitrust analysis must be

---

2/ See 131 Cong. Rec. S665 (daily ed. Jan. 24, 1985)(statement of Sen. Gorton.)

sensitive is the need for 'on-field parity' of the teams in a league. While fans generally may have a favorite team in a particular game, the demand for viewing a game is enhanced by the uncertainty about which team will win. Few of us enjoy lopsided games. While the fans of a dominant team might continue to attend the games of a league marked by an absence of parity to see their team trounce the opposition, other fans would soon grow weary of the ineptitude of the weaker teams. As a result, overall demand for the league's games will decline, and consumer welfare will be reduced from what it would be if the league were able to take actions necessary to promote parity.

From an economist's viewpoint, the best way to ensure optimal parity is to have a single entity control the league. That entity could allocate players, coaches and facilities in a way that maximized on-field competition and could correct any competitive imbalance that might arise. That's all well and good in theory, but those of us fans who are not economists would find it a little 'fishy' that the same owner controlled both teams out on the field. We might begin to believe that the outcome of games was predetermined, and our interest in games might cool. Thus, in addition to parity, each team must also maintain its competitive independence. Maintaining this balance between on-field parity and team rivalry is the primary objective of many sports leagues rules that in other industries would be viewed with great suspicion. In general, the antitrust laws have proven sufficiently flexible to accommodate this balance. Thus, for example, player drafts, which tend to promote an even distribution of player talent throughout a league, are judged under a rule of reason analysis, [3] whereas an agreement among competitors in other industries to allocate among themselves the right to purchase inputs would generally be *per se* illegal. [4]

In general, a professional sports league should be viewed as a joint venture. The antitrust laws recognize that, as to joint ventures in general, some limitations on competition among the members may enhance consumer welfare. In the case of sports leagues, some limitations may be necessary to ensure parity among the teams. At the same time, general joint venture analysis recognizes that, depending on the circumstances, unnecessary elimination of competition among the members of the venture can restrict output and thus harm consumer welfare. Accordingly, the need for some cooperation among the members of a joint venture does not necessarily justify any and all limitations on their ability to compete with one another.

The Supreme Court's recent decision in the *NCAA* case [5] reflects the appropriate judicial approach to applying general antitrust principles to team sports. In NCAA, the Court applied a rule of reason analysis (advocated in the government's amicus brief). The Court concluded that the NCAA's prohibition on member schools' ability to negotiate independent television contracts violated the antitrust laws because the prohibition was not reasonably necessary to promote on-field parity, and because the NCAA had market power. This conclusion appears well-founded: in the year since the decision, the number of games broadcast has doubled, the number of viewers has increased by 10% and revenues on the broadcasts have declined by 50%--which suggests an erosion of prior supracompetitive profits. The NCAA decision illustrates two important points: (1) properly applied, the antitrust laws do not ignore the special attributes of the sports business; and (2) the antitrust laws can serve a useful economic purpose in the context of sports.

---

[3] *See Smith v. Pro Football, Inc.*, 593 F.2d 1172, 1177-1189 (D.C. Cir. 1978).

[4] *See, e.g.*, *United States v. Capitol Service, Inc.*, 756 F.2d 502, 505-507 (7th Cir. 1985).

[5] *NCAA v. Board of Regents*, 104 S. Ct. 2948 (1984).

* * *

With this background on the general relationship between sports and the antitrust laws, I would like now to examine the legal and economic merits of the proposed exemptions for franchise relocation rules and revenue pooling.

The current state of the antitrust law concerning franchise relocation rules is somewhat confused. There are only two reported decisions applying antitrust standards to league restrictions on franchise relocation, and those decisions came to opposite conclusions. In Los Angeles Memorial Coliseum v. NFL (the "Raiders" case), 6/ plaintiffs challenged an NFL rule that required three-fourths of the league owners to approve any relocation. The rule was invoked to block the move of the Oakland Raiders to the Los Angeles Memorial Coliseum, which was located in the same metropolitan area as another NFL team. The court of appeals applied a rule of reason analysis and held that substantial evidence supported the jury's determination that the particular rule in question was an unreasonable restraint of trade in violation of the Sherman Act. The Raiders court did not hold that all possible league restraints on franchise relocation would be unlawful; but on the facts of the Raiders case, the court concluded, the NFL could have designed a less restrictive rule that would have served its interest in producing its product but would not have foreclosed competition among its teams.

In contrast to the Raiders case, league restrictions on franchise relocation were upheld in San Francisco Seals Ltd. v. NHL (the "Seals" case), 7/ where the court rejected a hockey team's Sherman Act challenge to the NHL's denial of its request to move from San Francisco to Vancouver, a community that had no NHL franchise. The Seals court reasoned that in the context

---

6/ 726 F.2d 1381 (9th Cir.), cert. denied, 105 S.Ct. 397 (1984).

7/ 379 F. Supp. 966 (C.D. Cal. 1974).

of that particular dispute, the Seals and other NHL teams were not competitors in the economic sense but rather were members of a single unit competing with other similar professional leagues.

The different conclusions in the Raiders and Seals cases reflect the problems that result from attempts by courts to evaluate the competitive effects of a league's franchise relocation decisions. A professional sports league's decision to block a franchise move to another team's area may either enhance or reduce consumer welfare, depending on the circumstances. A league's decision to block a franchise relocation will not harm competition when the effect of that decision is to increase output (e.g., viewership) of the league and its teams. Assessing the effect of a league's relocation decision on output involves examining the effects on consumers (fans) in the city from which the team would be moved and in the city to which it would move, as well as on fans in other cities (who may, for example, be less loyal to their team if they fear it will move). As a practical matter, our analysis to date strongly suggests that the league's choice is highly likely to be procompetitive or competitively neutral.

Unfortunately, it is extremely difficult for courts correctly to determine whether a league's blocking of a particular franchise relocation benefits or hurts consumers because of the complexity of the trade-offs between consumer welfare gains and losses. 8/ We have been unable to discern any readily apparent rules of thumb (e.g., market power of the league or team) that can facilitate an effort to determine whether the league's decision is likely to be consistent with antitrust policies. 9/ Thus, one cannot have great confidence that in the case of franchise relocations the courts are capable of developing rules and precedent that will allow them to determine the consumer welfare effects of a league's decision. And therefore, because of limitations inherent in the judicial process, because of the consumer welfare costs of a court incorrectly overruling a league's decision to block a franchise relocation, and because of our conclusion that a league's decision generally will promote consumer welfare, courts should defer to a league's decision to block a franchise

---

8/ In some situations, the league will want--and it will be socially beneficial--to block relocations that are desired by individual teams. In other situations the league could block relocations that could be socially beneficial.

Proper evaluation of these trade-offs would require estimates of the likely expansion of output in the city into which the team moved, along with the increased consumer surplus in that city; similar estimates for decreases in output and consumer surplus would be required for the city from which the franchise is moved. Expert testimony would be necessary in each of these areas; but these are areas where the ability of economists to make empirical judgments is limited.

9/ There are, however, rules of thumb that indicate that competition is not harmed by blocking certain franchise relocations. For example, blocking a move to a city that otherwise does not have a franchise is not a competitive threat and should be found to be legal. The *Seals* case involved such a situation, and the court had little difficulty finding the league's actions lawful.

relocation. In effect, a league's franchise relocation rule should be deemed per se lawful, unless it adversely affects competition with other leagues or is merely a subterfuge to disguise some other egregious anticompetitive conduct. The Department would not, therefore, oppose an antitrust exemption for league decisions to block franchise relocations.

Our analysis of the proposed exemption for revenue pooling leads to a very different conclusion. Both S. 298 and S. 259 would create an antitrust exemption for leagues to enforce revenue pooling rules that "tend to promote comparable economic opportunities" for the member clubs. This broad exemption would allow a sports league to pool all revenues derived by its member teams and divide them evenly among the teams, without regard to the possible anticompetitive effects of pooling in markets in which the teams compete with one another (e.g., the market for the sale of cable television rights). The need for "parity" within a sports league does not justify this exemption. Antitrust analysis currently recognizes that need, as the recent NCAA decision demonstrates. We know of no adverse judicial decisions regarding the pooling of revenues by professional sports leagues that would even begin to justify an antitrust exemption for such rules. Moreover, immunized revenue pooling rules might well lead to significantly anticompetitive conduct in important areas, such as the sale of games for cable television. 10/ While some revenue pooling can be an appropriate means for promoting on-field parity under certain circumstances, it can also go too far, creating an unjustified restraint on competition. Thus, revenue pooling should be subject to a rule of reason antitrust analysis--an analysis, unlike that available for franchise relocations, that can relatively easily determine whether revenue pooling promotes or harms consumer welfare. Particularly in light of the NCAA precedent, and the apparent benefits from that decision, a broad grant of immunity to revenue pooling rules is plainly inappropriate.

The Department is also unpersuaded that there is a need for S. 259's exemption for league actions regarding the selection and termination of owners. In contrast to the flexibility provided by the antitrust laws for dealing with individual competitive contexts, the exemption proposed by S. 259 would exempt league rules regardless of their purpose and competitive effect. This broad exemption would appear to permit a league, for example, to use such a rule to inhibit the ability of other sports leagues to compete. There is no justification for such a result.

10/ In 1961, Congress exempted from the antitrust laws agreements by which the member clubs of professional football, baseball, basketball, or hockey leagues pool their separate rights in the "sponsored telecasting" of their games and sell those pooled rights to one or more purchasers, such as television networks. 15 U.S.C. § 1291. Leagues currently pool revenues from such sales.

As this Committee knows, the Department of Justice is generally opposed to antitrust exemptions, and we do not lightly come to the conclusion that an antitrust exemption for franchise relocation rules may be appropriate. The Department firmly believes that maximum reliance on the marketplace is essential to protect this nation's economic and political liberties. Competition, with very rare exceptions, is also the best guarantee that our society's resources will be allocated efficiently and that American consumers will be as well off as possible. The antitrust laws, when properly applied, simply protect the marketplace from private (and to some extent governmental) restraints. At times, however, courts and government enforcers have inappropriately applied the antitrust laws in a way that interfered with, rather than protected, the marketplace, with the result that the antitrust "cure" was worse, in terms of damage to the marketplace, than the competitive "disease" at which it was aimed. Such is necessarily the case with efforts by the courts to second-guess a league's decisions concerning franchise relocations. Perhaps the courts in time will correct the situation with some form of _per se_ rule of legality for such decisions. However, because of the uniqueness of professional sports and their place in American life, the cost of leaving the solution to the courts may be prohibitive and makes a limited immunity appropriate.

Let no one be misled by our support for such an exemption, however. We view it as a unique situation. We will continue to oppose vigorously those antitrust exemptions that would inappropriately protect some industry or industry practice from the rigors of the marketplace. We recognize that most exemptions, because they are backed by the coercive power of the government, can seriously threaten competition and consumer welfare. The Department thus has concluded that, despite the unique characteristics of professional sports, an antitrust exemption for revenue pooling and selection and termination of owners is not warranted.

* * *

While some antitrust exemption for franchise relocations may be appropriate, the Department strongly opposes any attempt to impose a new and different legal regime to regulate franchise relocations. Such a new regime threatens to be an even greater threat to consumer (i.e., fan) welfare than the risk of improper application of the antitrust laws that it would replace.

S. 172, S. 259 and S. 287 all would specify new standards for determining the legality of various sports league rules. Courts or specially-created federal arbitration boards would be the ultimate arbiters of whether particular franchise relocations were "reasonable and appropriate," taking into account, in some unspecified manner, a prescribed array of factors. Thus, these bills would place decisions by sports teams and leagues concerning franchise relocation under a new and unique regulatory regime.

The heavy-handed regulation contemplated by the bills runs counter to the laudatory trend toward deregulation in our economy generally. Our nation's fundamental economic policy is reliance on marketplace competition free from public and private restraints, rather than on unneeded state or federal regulation, to determine the location of businesses. Economic efficiency and consumer welfare are enhanced by allowing firms to locate where their costs are lowest and the demand for their products is greatest. The typical firm is free to relocate in order to reduce its costs (e.g., wages, taxes, transportation) or to stimulate demand for its product. In general, Congress wisely has not interfered with market processes by regulating business relocation. By the same reasoning, government interference in the relocation of professional sports franchises also should be avoided.

Similarly, the Department believes that there is no justification for the legislatively-mandated expansion of Major Baseball League and the NFL proposed by S. 287. In a free-market system, firms--not regulators or legislators--are generally considered the best judges of how and where their products are marketed. Congress does not mandate that steel manufacturers, for example, must open new plants in specific cities according to a specific schedule. The assessment of demand and the amount of athletic and managerial talent available to satisfy this demand are best left to the judgment of the NFL and Major League Baseball. Finally, S. 287's provisions concerning access to facilities are also unwarranted. There is no reason to believe that the standards of the antitrust laws are too inflexible to afford adequate access to new or competitive sports facilities.

Professional sports have become so popular precisely because the entrepreneurs who own teams have been able to respond to market forces. Indeed, professional team sports in this country represent a triumph of capitalism. We would be unwise to ignore the importance of private economic decisionmaking in that success. But, the quasi-regulatory regimes that these bills would create would do just that. Moreover, they would provide a dangerous precedent for further, even more harmful, federal regulation of professional sports.

* * *

In sum, the Department of Justice believes that the new regulation and antitrust exemptions regarding franchise relocation, revenue pooling, and other professional sports league practices proposed by S. 298, S. 259, S. 172, and S. 287 are unwarranted departures from our economy's fundamental reliance on the operation of free markets, as the means of maximizing economic efficiency and consumer welfare. As presently drawn, none of these bills would well serve consumer interests. At the same time, the Department recognizes that judicial second-guessing of a league's decision to block franchise relocation does not serve the interests underlying the antitrust laws. As a practical matter, the courts are incapable of evaluating the consumer welfare effects of a franchise relocation decision. In addition, we believe that the interests of leagues in applying franchise relocation rules will nearly always coincide with the interests of consumer welfare. Because, in the unique competitive context of professional sports leagues, we cannot say that a narrowly-written and non-regulatory antitrust exemption for franchise relocation rules by itself would have a significantly adverse effect on our nation's competition policy, the Department would not oppose such an exemption. While the Department recommends against enactment of these bills in their present form, we would, of course, be happy to work with the Congress to develop legislation that avoids creating burdensome new regulatory schemes.

That concludes my prepared remarks, and I would be pleased to answer any questions the Committee might have.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Deputy Assistant Attorney General

Washington, D.C. 20530

March 13, 1986

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter responds to your letter to Deputy Assistant Attorney General Rule dated June 28, 1985, enclosing questions on behalf of Senator Grassley and Senator Mathias concerning professional sports antitrust legislation. The Department of Justice's answers to those questions are enclosed.

We appreciate the opportunity to present our views, both in the Committee's June 12 hearing and in response to the follow-up questions that you have submitted.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Kenneth P. Bergquist
Deputy Assistant Attorney General

Enclosure

cc: Honorable Charles E. Grassley
Honorable Charles McC. Mathias, Jr.

DEPARTMENT OF JUSTICE ANSWERS TO QUESTIONS ON PROFESSIONAL SPORTS ANTITRUST LEGISLATION

Question Submitted by Senator Grassley

Question: What is the possibility of cities contracting with leagues to remain in the localities or face large liquidated damages?

Answer: The question appears to suggest the use of contracts to keep particular teams in the cities in which they are currently located. Cities or stadium authorities can, of course, enter into long-term contracts or leases of the type suggested in the question with particular teams. Leagues could try to provide cities with that type of contractual guarantee, but in the absence of either an antitrust exemption or the type of judicial deference to league actions regarding franchise relocation that we suggested is appropriate in our June 12, 1985 Statement, a league that attempted to honor such a contractual guarantee by preventing a team from relocating could have its actions challenged by that team under the antitrust laws.

Questions Submitted by Senator Mathias

Question 1: The NFL argues that if the leagues had not merged in 1966 there would have been "internal deterioration" of both leagues. Do you agree? Do you think that football is a natural monopoly? If so, what is the appropriate role for government; i.e., should the leagues be subject to government regulation as in the case of other natural monopolies, or should we allow the leagues to regulate themselves?

Answer: The Department of Justice is not in a position to assess at this juncture what might have happened almost twenty years ago had the American Football League and National Football League not merged.

We also cannot give a definitive answer as to whether professional football (or any other sport) is a natural monopoly. Generally, "natural monopoly" is used to describe a market in which the minimal optimal scale of production is so large that there is room in the market for only one firm. A sports league might be considered a natural monopoly if, for example, the minimum number of teams needed for a league and the demand for the sport were such that only one league could exist. While we doubt that professional football should be considered a "natural monopoly" on this basis, the conclusion that a market has natural monopoly characteristics is best reached after a market test, in which new entrants have a chance to compete with the established firm. In the case of professional football, the market test has been ongoing, as the NFL has been challenged by the AFL, the World Football League and the United States Football League in the past three decades.

If economically competing leagues for a given sport can survive over the long term, consumer welfare would be enhanced as there would be competition between the leagues in a variety of markets for the leagues' inputs and outputs (e.g., leagues would compete for television contracts, playing facilities and in rules changes and other ways of improving the game itself). 1/ The major empirical question is whether economically competing leagues could survive over the long term. (If not, then the particular sport might in some sense be considered a natural monopoly.) In order for this sustained survival to occur, we suspect that the leagues would have to be roughly comparable in terms of quality of play, as fans generally would not want to watch a concededly inferior/"minor league" quality of play. 2/ While we have generally not seen in recent decades separate, roughly comparable and fully competing leagues over the long term, we cannot conclude that such a situation could not occur.

Even if one were to conclude that a particular professional sport had some type of natural monopoly characteristics at a particular time, that would not necessarily make regulation worthwhile. Meaningful regulation of a monopoly sports league or any other monopoly would have to address areas in which the monopolist could otherwise significantly exercise market power. In the case of a monopoly sports league, this could entail regulating the fees charged for television rights and perhaps the salaries paid to players -- areas that on their face do not appear to good candidates for government regulation. Moreover, simply because a market could sustain only a single league of a particular professional sport would not lead to the conclusion that that league could actually raise price over cost. If most of those who "demand" the professional sport viewed other sports or forms of entertainment as close substitutes for the professional sport,

---

1/ Leagues that compete economically could, of course, cooperate in ways consistent with the antitrust laws, such as in staging a championship game or all-star game between the two leagues.

2/ It is possible that fan preference for seeing only the best athletes playing against each other could result in the best players/teams -- and therefore the lion's share of fan interest -- residing within one league, and that a single league in such a situation could be consistent with maximizing consumer welfare.

then competition from those other forms of entertainment may inhibit the league's exercise of market power. As a result, government regulation, which under any circumstances is costly, may provide no offsetting benefits.

Questions 2-3:

2. The NFL has argued that it is a single entity and therefore beyond the application of much of the antitrust law. Central to this argument are the activities that must be coordinated among all the league members such as scheduling games, rules for the game, and revenue sharing. Do you believe that the NFL is a single entity? If it is a single entity, how would this affect your enforcement of the antitrust laws with respect to the NFL?

3. If the NFL did not control so much of the professional football market (for example if there were another league or perhaps three leagues with roughly the same market share) how would the Justice Department view the league's argument that it is a single entity?

Answer: As is described in our June 12, 1985 Statement, in general, a professional sports league should be viewed under the antitrust laws as a joint venture. As to joint ventures in general, the antitrust laws recognize that some limitations on competition among the members of a venture may enhance consumer welfare. At the same time, general joint venture analysis recognizes that, depending on the circumstances, unnecessary elimination of competition among the members of a venture can restrict output and thus harm consumer welfare. Among those circumstances are the existence of competitors to a venture. If, for example, there were a number of other competing leagues (football or otherwise), a league would itself be unable to restrict competition.

By recognizing that some limitations on competition among the members of a joint venture may enhance consumer welfare, joint venture analysis takes account of the "entitiness" of a venture. To go further and for purposes of legal analysis view a sports league or any other joint venture as a "single entity" would make any and all conduct undertaken by that venture or its members per se legal under Section 1 of the Sherman Act, a result which would be inappropriate.

Questions 4-5:

4. The NFL maintains that their relevant market is all entertainment and not just professional football? How would the Department define the relevant market for the NFL?

5. Do you think that factor #10 in S. 259 -- to be considered by the league in determining the "reasonableness" of a move -- changes the definition of the NFL's relevant market.

> (Factor #10 is, "the number of professional, university and college teams playing the same sport as the member club which are currently conducting sports operations in the member club's home territory and in the proposed location of such member club, and the effects that the proposed change in the location of such member club may have on such teams and their leagues.")

Answer: The U.S. Department of Justice Merger Guidelines formally define the term "market" and describe the manner in which, for purposes of merger analysis, the Department determines "product market" and "geographic market." The National Football League participates in several markets, both in markets where it is a user (purchaser) of inputs such as players, officials and stadia, and in markets where it is a seller of its outputs, such as television and radio rights to games and live attendance. We have not had occasion to perform the analysis needed to define the relevant markets in which the NFL participates.

Questions 6-7:

6. In 1961 Mr. Rozelle testified that if a single league could negotiate with all three of the major networks, it would have a significant market advantage. Do you think the NFL's television contract with the three networks gives them a significant competitive advantage over the USFL?

7. Do you think that the NFL's television contracts with the three networks represents a significant barrier to entry for the USFL? If so do you have any recommendations as to how to change it?

Answer: These questions raise factual questions that we have not investigated. Further, because the questions are, as we understand it, being litigated in the USFL's antitrust suit against the NFL, and because the Department of Justice does not comment extra-judicially on the merits of pending private lawsuits, we would not wish to speculate on these issues.

Question 8: Although the Department of Justice favors antitrust immunity for league relocation decisions, do you think that such relocation decisions should be beyond court review? Should communities have the right to appeal the League's decision in court for a de novo review of the relocation decision? Or should the courts be limited to a "substantial evidence" review as mandated in S. 259?

Answer: As is described more fully in our June 12, 1985 Statement, the Department of Justice would not oppose a narrowly-written and non-regulatory antitrust exemption for league rules on franchise relocation. We reached that position because of limitations inherent in the judicial process, because of the consumer welfare costs of a court incorrectly overruling a league's decision to block a franchise relocation, and because of our conclusion that a league's decision generally will promote consumer welfare. With a narrowly written and non-regulatory antitrust exemption, there would be no court antitrust review except with regard to whether the league's action adversely affects competition with other leagues or is merely a subterfuge to disguise some other egregious anticompetitive conduct.

The question appears to suggest the use of statutory standards regarding franchise relocation and to suggest that league decisions employing those standards be judicially reviewable (either a de novo review or a review based on a "substantial evidence" standard). As is set forth more fully at pp. 15-17 of our June 12 Statement, the Department believes that such use of statutory standards or factors would place decisions by sports teams and leagues under a new and unique regulatory regime. We reiterate that we strongly oppose any attempt to impose a new and special legal regime to regulate franchise relocations.

Question 9: It has been suggested that revenue sharing inhibits NFL expansion, since the addition of new teams means that the same amount of revenue must be divided more ways and the addition of more football teams lowers the value of each team? Could you please comment on this?

Answer: Numerous factors are likely to influence a league's expansion decisions. It would be very difficult to assess the effect, in isolation, of the NFL's current level of revenue sharing on expansion and, more generally, on the total number of teams in a league. 3/ Economic theory would suggest, however, that when a successful joint venture and its members create revenues that are shared equally by the venturers, others will seek to join the venture and share in those revenues so long as their pro rata share of revenues exceeds their own costs, but that the joint venture will not want to accept a new member unless the revenues created by such

---

3/ Proponents of the NFL's high level of revenue sharing would probably suggest that such revenue sharing has helped to preserve teams that are located in smaller TV markets.

expansion are expected to exceed the new member's pro rata share of the venture's total revenue. 4/

Question 10: Normally, we rely on competition for profit to ensure that consumers get the best product and the most reasonable price. Some maintain that because the NFL shares over 90 percent of its network television revenue the incentive for team owners to put out the best product is reduced. Could you please comment on whether you believe the current level of revenue sharing inhibits competition between team owners?

Answer: Economic theory suggests that revenue sharing by the teams in a league could reduce the incentive for owners of individual teams to put out the best product. An individual owner, when considering whether to undertake an additional expenditure, will likely look at what additional revenue that expenditure will produce for himself. Clearly, to the extent the revenues generated by the expenditure will be shared with other team owners, the incentive for that individual owner to undertake the expenditure will be reduced.

Even though a particular type or level of revenue sharing may thus reduce competition among league members, that does not mean that it reduces consumer welfare so as to violate the antitrust laws. As is described at pages 5-8 of our June 12, 1985 Statement, the antitrust laws recognize that, as to joint ventures in general, some limitations on competition among the members may enhance consumer welfare and that in the case of sports leagues, some limitations may be necessary to ensure parity among the teams. Maintaining the balance between on-field parity and team rivalry is vital for sports leagues. 5/

4/ Because the league can enter into contractual compensation arrangements with persons seeking admission to the league via an expansion franchise, the league can move closer to a system where expansion occurs when total profits rather than profits per team increase. The availability of such arrangements likely enhances economic efficiency, since expansion would be expected to take place where the value of a new team, reflected in its augmentation of overall league revenues, exceeded the costs of expansion, which include costs associated with additional players, stadium leases, and any overall decline in consumer demand caused by dilution (or increased variance) of team quality.

5/ For example, parity could be promoted most directly by having the league dictate yearly player allocation, but this would no doubt reduce team rivalry so much in the eyes of fans as to greatly diminish fan interest.

As is indicated at pages 12-13 of our Statement, we believe that while some revenue pooling can be an appropriate means for promoting on-field parity under certain circumstances, it can also go too far, creating an unjustified restraint on competition. The Antitrust Division has not had occasion to investigate the competitive effects of the level and types of revenues currently shared by NFL teams. 6/

Question 11: It has been suggested that if the NFL/AFL merger had not taken place there would have been more expansion in football, as two separate, competitive leagues vied for choice markets. Could you please comment on this?

Answer: It is extremely difficult to suggest what might have happened had the NFL/AFL merger not taken place, especially in an area as complex as expansion. Had the two leagues survived over the long term, in the absence of explicit or tacit collusion, there would have been competition between them in a number of areas, including competition for team location and playing facilities. This does not necessarily suggest that there would have been more teams (i.e., expansion) in the absence of the merger, but does suggest that if multiple, fully-competing leagues can survive over the long term, a locality or stadium facility seeking to attract or to retain a team would not have to deal with only one supplier of teams. The empirical evidence from the years when the NFL and AFL were separate and fully competing may also be viewed as indicating that, assuming league control over franchise relocation, co-location of franchises within a metropolitan area (e.g., Jets/Giants; Raiders/Forty-Niners) is more likely to occur when there are such separate and competing leagues.

Question 12: In your written testimony you opposed the additional antitrust immunity for league revenue sharing as contained in both S. 259 and S. 298. Under what conditions could the NFL justify the need for this additional antitrust immunity (e.g., financial hardship) and what evidence would they need to present to demonstrate that need?

6/ As we understand it, a very significant percentage of the NFL's overall revenue is derived from its network television contracts. In 1961, Congress exempted from the antitrust laws agreements by which the member clubs of professional football, baseball, basketball, or hockey leagues pool their separate rights in the "sponsored telecasting" of their games and sell those pooled rights to one or more purchasers, such as television networks. 15 U.S.C. § 1291. The NFL and other sports leagues currently pool revenues from such sales.

Answer: The Department's decision not to oppose a narrowly-written and non-regulatory antitrust exemption for franchise relocation rules is based both upon the difficulty courts have in reaching the right outcome under the antitrust laws (combined with the consumer welfare costs of reaching the wrong outcome) and upon our conclusion that a league's decision is highly likely to be procompetitive or competitively neutral. The presence of both of these factors regarding revenue pooling rules would be needed in order to establish any need for an antitrust exemption for such rules.

With revenue pooling, however, we know of no adverse judicial decision that would justify an antitrust exemption for such rules. To the contrary, rule of reason antitrust analysis recognizes the need for "parity" within a sports league and can relatively easily determine whether a particular revenue sharing arrangement promotes or harms consumer welfare. Further, unlike the case of franchise relocation rules, immunizing revenue pooling rules might well lead to significantly anticompetitive conduct. Accordingly, an antitrust exemption for revenue pooling rules is plainly inappropriate.

Question 13: Is the Court granted blanket antitrust immunity justified for baseball? If so, why is it justified for baseball and not the other leagues? If not, in what ways should baseball's antitrust immunity be limited?

Answer: It is important to recognize that an antitrust exemption for an entire industry is quite different from an exemption for a particular category of an industry's practices. Where only a particular category of an industry's practices is to be exempted, it is possible to analyze with some precision exactly what conduct will be exempt and thus have some certainty that an exemption will not be overbroad. An exemption for an entire industry is far more likely to be overbroad in the sense of immunizing some significantly anticompetitive conduct. With these considerations in mind, while we would not oppose an appropriate exemption for baseball league franchise relocation decisions, we would continue to support elimination of baseball's judicially created antitrust exemption. 7/

7/ The Antitrust Division has for some time supported elimination of baseball's exemption. That position was reiterated in a July 14, 1981 Statement by then Deputy Assistant Attorney General Lipsky before the House Subcommittee on Monopolies and Commercial Law Concerning Professional Sports and the Antitrust Laws.

Senator **Specter**. I would like to introduce at this time the next panel which consists of Mr. Russell Granik, executive vice president of the National Basketball Association; Mr. Alan I. Rothenberg, president of the Los Angles Clippers Basketball Club; and Mr. Neal Pilson, executive vice president of the CBS Broadcast Group

A vote has come up. We would do the best we can. We will start with Mr. Russell Granik, the executive vice president of business and legal affairs of the National Basketball Association.

STATEMENTS OF PANEL INCLUDING RUSSELL GRANIK, EXECUTIVE VICE PRESIDENT, BUSINESS AND LEGAL AFFAIRS, NATIONAL BASKETBALL ASSOCIATION, NEW YORK, NY; GEORGE VUKASIN, PRESIDENT, OAKLAND COLISEUM BOARD, OAKLAND, CA; ALAN I. ROTHENBERG, PRESIDENT, LOS ANGELES CLIPPERS BASKETBALL CLUB, LOS ANGELES, CA; AND NEAL PILSON, EXECUTIVE VICE PRESIDENT, CBS BROADCAST GROUP, NEW YORK, NY

Mr. **Granik**. Thank you.

I have submitted a written statement. In response to your request. I will make my statement as brief as possible.

We appreciate your invitation to appear before this committee to present the views of the National Basketball Association concerning the relocation of professional sports franchises.

In the judgment of the NBA, there is no more fundamental concern for a professional sports league than the selection of the markets in which its teams operate. The NBA is engaged in intense economic competition with other major league professional sports and collegiate sports and with other forms of public entertainment for customers, fan loyalties, radio, television and cable revenue and other sources of income.

In order to encourage fans to make the significant monetary and emotional investment necessary to the success of NBA franchises, and to promote team stability, the NBA strongly discourages the movement of franchises. Indeed, during the past decade, but prior to the decision of the U.S. Court of Appeals for the Ninth Circuit, in the so-called *Oakland Raiders* litigation, the NBA approved only two relocations of franchises to new territories—and then only after a showing of financial crisis and potential financial ruin from continued operations in the former markets.

The *Oakland Raiders* litigation has thrown the entire issue of franchise relocation into a turmoil that has engulfed the NBA along with other professional sports leagues. In January, the Kansas City Kings requested NBA approval to relocate their team to Sacramento, CA, for the 1985-86 NBA season, which request the league ultimately approved on April 16. And a year ago, the San Diego Clippers simply moved to Los Angeles without even seeking such approval.

As a result of the Clippers' precipitous departure from San Diego, the NBA is now involved in a prolonged and costly litigation in which we are seeking a declaration of our right simply to consider whether a team should or should not be granted approval to relocate to a new city of operation.

The more recent request by the Kansas City Kings to relocate to Sacramento shows the straitjacket into which the *Oakland Raiders* case has placed professional sports leagues. In accordance with the NBA's current procedures, Commissioner Stern appointed a committee to study whether the proposed move met certain criteria necessary for approval of the Kings' relocation.

Absent from these criteria was any detailed examination of the manner in which the team's former market had given its support and the appropriateness of abandoning that market, since there is some doubt under the opinion of the ninth circuit as to whether such factors may properly be taken into account, and we continue to be concerned that such an analysis might actually subject the NBA to a claim for substantial damages.

The NBA views S. 259 to be an appropriate legislative response to these unfortunate circumstances by affirming the right of professional sports leagues to consider and determine, in a reasonable and responsible manner, whether to approve the relocation of their franchises. I hasten to point out that the absence of such legislation will not imperil the survival of the NBA. We are comfortable that our rules comply with the analysis of the ninth circuit, and we will continue to act on that basis. However, the absence of new legislation will continue to preclude the NBA from giving cities which currently hold NBA franchises the just and fair consideration they deserve in the event their franchises decide to relocate.

If you were an NBA owner considering whether to approve the relocation of another NBA team, and your lawyers were telling you that if you vote against it, even on the basis of objective criteria, you are going to be a defendant in an antitrust suit with a claim for damages of as much as $70 million, you would be hard-pressed to deny a team permission to move virtually any place, under any circumstances.

The NBA supports legislation that will confirm the right of professional sports to make these judgments, with due regard to community interests, but without fear of exposure to multimillion-dollar damage judgments.

[Statement follows:]

PREPARED STATEMENT OF EXECUTIVE VICE PRESIDENT RUSSELL T. GRANIK OF THE NATIONAL BASKETBALL ASSOCIATION

I appreciate your invitation to appear before this committee to present the views of the National Basketball Association concerning the relocation of professional sports franchises.

In the judgment of the NBA, there is no more fundamental concern for a professional sports league than the selection of the markets in which its teams operate. The NBA is engaged in intense economic competition with other major league professional sports and collegiate sports and with other forms of public entertainment for customers, fan loyalties, radio, television and cable revenue, and other sources of support. All members of the league have a vital interest in selecting geographic locations that will enhance professional basketball's ability to market and promote its product and to compete effectively with other forms of public entertainment. Moreover, in order to encourage fans to make the significant monetary and emotional investment necessary to the success of NBA franchises, and to promote team stability, the NBA strongly discourages the movement of franchises. Indeed, during the past decade, but prior to the decision of the United States Court of Appeals for the Ninth Circuit, in the so-called *Oakland Raiders* litigation, the NBA approved only two relocations of franchises to new territories—and then only after a showing of financial crisis and potential financial ruin from continued operations in the former markets.

The *Oakland Raiders* litigation has thrown the entire issue of franchise relocation into a turmoil that has engulfed the NBA along with other professional sports leagues. In January, the Kansas City Kings requested NBA approval to relocate their team to Sacramento, California for the 1985-86 NBA season, which request the league ultimately approved on April 16. And a year ago, the San Diego Clippers simply moved to Los Angeles without even seeking such approval.

As a result of the Clippers' precipitous departure from San Diego, the NBA is now involved in a prolonged and costly litigation in which we are seeking a declaration of our right simply to consider whether a team should or should not be granted approval to relocate to a new city of operation.

The more recent request by the Kansas City Kings to relocate to Sacramento shows the straight-jacket into which the *Oakland Raiders* case has placed professional sports leagues. In accordance with the NBA's current procedures, Commissioner Stern appointed a committee to study whether the proposed move met certain criteria necessary for approval of the Kings relocation. Among the criteria we considered was: whether the proposed new location could support an NBA franchise; whether the applicant demonstrated that it could operate successfully in the new location; whether the proposed relocation would have an adverse effect upon the NBA's ability to market basketball on a nationwide basis; and whether the proposed new location presented particular disadvantages for the operation of and support for the NBA, such as creating significant travel or scheduling difficulties.

Absent from these criteria was any detailed examination of the manner in which the team's former market had given its support and the appropriateness of abandoning that market, since there is some doubt under the opinion of the Ninth Circuit as to whether such factors may properly be taken into account. Thus, although the NBA believes that any consideration of a proposed franchise relocation should, on the basis of both fairness and good business judgment, involve a thorough examination of the interests of the market being abandoned and the ability of that market to support a successful team, we continue to be concerned that such an analsis might actually subject the NBA to a claim for substantial damages.

The NBA views S. 259 to be an appropriate legislative response to those unfortunate circumstances insofar as it affirms the right of professional sports leagues to consider and determine, in a reasonable and responsible manner, whether to approve the relocation of their franchises. Moreover, the bill provides that the league may consider such matters as the adequacy of the existing arena and related facilities, the extent to which such inadequacies may be remedied, and the level of existing public support, all of which the NBA believes are relevant and important issues, but which prevailing judicial opinions may not permit us to consider. The absence of such legislation will not imperil the survival of the NBA. It will, however, continue to preclude the NBA from giving cities which currently hold NBA franchises the just and fair consideration they deserve in the event their franchises decide to relocate.

If you were an NBA owner considering whether to approve the relocation of another NBA team, and your lawyers were telling you that if you vote against it, even on the basis of objective criteria, you are going to be a defendant in an antitrust suit with a claim for damages of as much as $70 million, you would be hard-pressed to deny a team permission to move virtually anyplace, under any circumstances.

The NBA is not in favor of legislation which would involve the creation of a federal board or agency to supervise and control franchise transfers. It is the leagues themselves, and not the federal government or a regulatory board, that are best suited to weigh the variety of competing considerations and balance the numerous relevant factors involved in a proposed franchise relocation. That NBA supports legislation that will confirm the right of professional sports to make these judgments, with due regard to community interests, but without fear of exposure to multmillion-dollar damage judgments.

Senator SPECTER. Thank you very much, Mr. Granik.

We will recess for a few moments.

[Short recess.]

Senator SPECTER. The hearing will reconvene and we will hear from Mr. Rothenberg, president of the San Diego Clippers Basketball Club.

Mr. ROTHENBERG. I have submitted a prepared written statement which I would like to have copied into the record.

Senator SPECTER. It will be made a part of the record, without objection.

I regret the haste of these proceedings, but they are about to start another rollcall vote. The scheduling is very precarious in this body.

You may proceed.

STATEMENT OF ALAN I. ROTHENBERG

Mr. ROTHENBERG. I believe enacting special legislation exempting sports leagues from the antitrust laws when they take action to terminate an owner's franchise or to block the relocation of a franchise is very much like giving the rabbit the lettuce to take home.

This pack of monopolistic thugs has an unending record of abusing their special position, and court after court has so held, whether in the area of player relations, where there is a long line of recorded abuse found by cases like *Robertson, Smith,* and *Mackey,* or the emerging history of such abuse directed against independent owners as in the *Raiders* case and now in the *Clippers* case.

The present furor and cry over franchise relocations is, I believe, a tempest in a teapot. If everybody stood back and let the free enterprise, free marketplace act in the classic way in which our system was designed, there will not be undue franchise relocations.

What has happened is that a handful of popular teams have left or threatened to leave, upsetting their fans. In reaction to that, the local officials who own the arenas or stadiums in question, have responded by coming to Congress for help. If, rather, this whole matter were handled in a free market atmosphere, those landlords, those municipalities who own the stadiums and arenas, would negotiate long-term leases and their leasees would stay put. If the result is a very favorable lease to a tenant, indeed, perhaps even free rent or other concessions, what is wrong with that? If the people of the community believe that sports are a special kind of business and they want to retain their franchise, why not give them a special rent deal? Municipality after municipality builds museums and concert halls and subsidizes them. City after city has urban renewal projects that subsidize commercial builders. Study after study shows that there is substantial ancillary benefit to the community in having a sports franchise, thereby creating revenues and intangible benefits for a city that more than make up for any rent lost due to a special rental deal. So my message to the fans who do not want to lose teams is, "put the heat on your local officials who control the facilities to lock up your teams with long-term leases." Then time-honored principals of landlord/tenant law will be sufficient to keep them in place. No special antitrust legislation is required.

Next, let us talk about the treatment of so-called maverick owners. Before owners invest multimillions of dollars to purchase teams, leagues conduct thorough investigations of their background. That, of course, is the appropriate time to make the decision on the merits as to the desirability of a particular owner. But, once an owner has made that substantial investment, there is absolutely no justification for allowing leagues in some Godlike fashion to pass continuing judgment on an individual owner's day-to-day affairs. To be sure, if an owner is a crook or some other kind of scoundrel, leagues ought to be in a position to terminate his franchise and pay a fair market value for it. But they ought not to be able to make that judgment free from complete and total judicial scrutiny.

The case of the Clippers is more than illustrative. The present owner bought the team from the then chairman of the board of the NBA. The team had been unsuccessful, and he had been trying to peddle it for years. He and the NBA were gleeful when they found someone to take it off his hands and happily and quickly admitted Mr. Sterling into the league. Quickly, they decided they did not like him for doing many of the very same things that the prior popular owner had done. Did they take steps to terminate his franchise then? No. But when he decided he would like to move the team from San Diego to Los Angeles in 1982, they suddenly sought to terminate his franchise. Just as quickly, when he acceded to the NBA's position and retreated back to San Diego, they dropped the termination of franchise proceedings, sat by and watched him operate the team for another 2 years and lose another $6 million, never once talking about terminating his franchise. However, then, in absolute compliance with the *Raiders'* decision and in complete compliance with the NBA's own constitution, he moved to Los Angeles. How did they respond? They quickly again decided to terminate his franchise, accusing him of mismanagement. The theme seems to be "you can do what you want, if you are one of the boys, or if you are not trying to invade one of the club members' exclusive territories. If, however, you are the black sheep in the family and you have the audacity to move into someone else's monopolistic turf, we are gonna accuse you of mismanagement and take away your franchise."

Finally, let me answer the plea by sports leagues that they are powerless to act. I do not read the *Raiders* case that way, and since the *Raiders* case uses the rule of reason, I do not think future courts will either. Clearly, there is nothing in the *Raiders* case that does anything but suggest that if the league had objective and reasonable restrictions and applied them that way, they would not necessarily violate the antitrust laws. So, for example, a minimum size stadium or arena requirement, a minimum size market area requirement, a restriction against moving out of the country, a restriction against moving during the midst of a playing season, all may be reasonable. Under any objective and reasonable set of standards, the Clippers move from San Diego to Los Angeles ought to have been, in basketball parlance, a "slam dunk." They had a 6-year history of enormous financial losses; they were playing in a condemned arena; they were playing without any significant fan support. They moved to a market with 12½ million people, an excellent arena, and immediately gained fan support.

Had the NBA not been bent on protecting the Los Angeles Lakers' exclusive turf and punishing a maverick owner, they would have welcomed the Clippers with open arms. Instead, they sought to terminate the franchise and sued to force the team to return to San Diego or, in lieu thereof, to pay a $25 million so-called relocation fee. In truth, extortion.

Do not grant an exemption to this disingenicus pack of monopolistic thugs.

Thank you.

Senator SPECTER. Nothing unequivocal about your testimony.

Mr. **Rothenberg**. I did not intend it to be.

Thank you.

[Prepared statement follows:]

STATEMENT TO
SENATE JUDICIARY COMMITTEE
RE SPORTS RELOCATION ANTITRUST BILLS

by ALAN I. ROTHENBERG,
SPORTS ATTORNEY AND LECTURER AND
PRESIDENT OF THE LOS ANGELES CLIPPERS,
NBA BASKETBALL TEAM

No business or industry should receive antitrust immunity except under the most extraordinary circumstances or to protect some basic national interest. Do professional sports teams or leagues qualify? Emphatically not.

It is important to remember that we are dealing with sports. Businesses, to be sure; but fun and games -- hardly vital American industry. We are not talking about an automobile plant or steel mill closing due to foreign competition; nor about a runaway plant, leaving town for lower labor costs and cheaper taxes. The loss of core industries with large numbers of employees can destroy the economic base of an entire community. Understand that the combined gross income of every team in the National Football League, Major League Baseball, National Basketball Association and National Hockey League would barely qualify for a listing in the Fortune 500. So, the fact that a franchise leaves a city will not effect the standard of living of the population. The lives of most people will be unchanged.

A further antitrust exemption for sports would give leagues a free license to act outside full judicial scrutiny. Insulating league decisions from judicial review or permitting a group of owners to operate in ways that could be arbitrary or could unreasonably restrain competition is unwarranted. Recent experience in sports suggests that restrictions on team movement would be easily subject to abuse, for the power has been used to punish mavericks in a league and to interfere with the business decisions of the franchises.

It is interesting to note that the only two recent instances where sports leagues have taken legal action to prevent relocations or to punish owners have involved so-called "maverick" owners (the Raiders, Al Davis, and the Clippers, Donald Sterling) who had the audacity (and good business judgment) to invade the lucrative, exclusive, monopolistic turf of entrenched Los Angeles franchise holders (the Rams and the Lakers). As the Department of Justice noted in 1980 in its letter to House Judiciary Committee Chairman Rodino:

> "When a geographic region is capable of supporting more than one franchise, it is not in the public interest to allow the existing team to block entry solely to protect monopoly profits."

The history of the Clippers and the NBA's response to their plight vividly demonstrates the potential for mischief proposed legislation immunizing sports leagues actions against franchise owners creates.

From 1978-1982, the Clippers suffered in San Diego. They lost an approximate aggregate $8 million under two different owners. Fans hadn't responded; the Arena was awful; no local TV contract existed. Things seemingly couldn't be worse. The then owner of the Clippers sought to move to Los Angeles. The reaction? The NBA sued the Clippers and began an investigation to terminate the owner's franchise, thus, threatening his multimillion dollar asset. Blunted, the Clippers agreed to stay in San Diego; the NBA agreed to drop its franchise termination proceedings. Over the next two years the Clippers took significant steps to make the franchise succeed: they improved the front office, coaching staff, players and their won-loss record; a massive marketing effort was undertaken; a TV contract was obtained. Unbelievably, things got worse. Paid attendance decreased. And ownership lost an additional $6 million. Furthermore, the arena remained so horrendous that it was ultimately declared unfit for playing professional basketball by a jury in San Diego. The ownership of the arena refused to spend money on normal maintenance let alone capital improvements. The roof leaked, the floor buckled and only a court order got them fixed. The Clippers were forced to purchase seats and backboards, because the arena refused to. Often, the arena was not even cleaned out from one game to the other, and the locker rooms were usually a mess. Finally, visiting teams and national cable and television networks were unable to bring in their television production facilities without having a deal with the arena's exclusive production company which charged exorbitant rates for a poor quality of production. In short, the arena situation alone was intolerable.

So, in May, 1984 the Clippers moved to Los Angeles -- this time without seeking NBA approval because the intervening Ninth Circuit's decision in Los Angeles Memorial Coliseum Commission v. National Football League ratifying the Raiders move from Oakland to Los Angeles emphatically gave the Clippers the absolute right to move without NBA approval. And, there was an absence of any applicable provisions in the NBA Constitution regarding franchise relocations (except for the 75 mile territorial restriction, which in everyone's opinion -- including the NBA's -- was indefensibly a violation of the antitrust laws).

What was the League's response to the hopeless plight of one of their franchise holders? As they had in 1982, the NBA again sued asking for the team to be returned to San Diego or that the NBA receive $25 million as a "relocation fee". And they began formal proceedings within the League to terminate the owner's franchise.

Why? First, the other NBA owners and its Commissioner wanted the Clippers' owner "out of the League". Second, to exact a ransom from the Clippers for invading the Los Angeles

Lakers' exclusive territory under the guise of a "relocation fee" even as the NBA conceded that Article 9 of the NBA Constitution (containing the 75 mile territorial limitation) was illegal.

The history of the NBA is replete with relocations by franchises without one red cent of "relocation fee" being asked or paid except when someone's illegal monopoly territory has been invaded.

For example:

Fort Wayne relocated to Detroit -- no relocation fee;
Rochester relocated to Cincinnati -- no relocation fee;
Minneapolis relocated to Los Angeles -- no relocation fee;
Philadelphia relocated to San Francisco -- no relocation fee;
Syracuse relocated to Philadelphia -- no relocation fee;
St. Louis relocated to Atlanta -- no relocation fee;
San Diego relocated to Houston -- no relocation fee;
Cincinnati relocated to Kansas City -- no relocation fee;
Buffalo relocated to San Diego -- no relocation fee;
New Orleans relocated to Salt Lake City -- no relocation fee.

Prior to the Clippers' move, only when the Nets moved to New Jersey -- invading the Knicks' exclusive territory - had a prior "relocation fee" been charged -- and that by the Knicks not the NBA (and before the Raiders case).

And, despite the Raiders decision; despite the NBA's lip service amendment to its Constitution ostensibly to comply therewith; despite the NBA's admission that its exclusive territorial rules are a per se violation of the antitrust laws, when Kansas City recently moved to Sacramento a ransom of nearly $1 million was extracted to "compensate" Golden State for the invasion of its exclusive territory.

Is this a league that deserves an antitrust exemption? To the contrary, it deserves antitrust prosecution.

The prevalent strident support for legislation is rooted in the anger of fans whose teams depart -- and the local politicians responsible for those losses.

I submit that faith in the free enterprise system will completely "solve" the "relocation problem". Most arenas and stadiums in this country are municipally owned. If retention of a professional sports franchise in a particular community is so important, then those stadium and arena owners will be sure to sign long-term leases with the franchises to keep them "home". If retention of a team is not sufficiently important to a community, they won't -- but they shouldn't be heard to complain when a franchise relocates.

Indeed, the intelligent response to the Raiders decision is -- and has been in many cases -- for stadium and arena owners to extend their existing leases to "lock-up" their franchise-tenants for the long term. Once that process has been completed the so-called franchise "free agency" or "relocation" problem will disappear. The temporary phenomenon will have passed without the drastic solution of an antitrust exemption.

As Howard Cosell has said, "There is no municipal obligation to support a bad product, but neither is there a law that says a businessman must go broke."

It is especially ironic that the free-wheeling robust entrepreneurs who tend to own teams and normally rail against Congressional interference with the free enterprise system are today running to Congress for special legislation -- to vest their illegal monopolies.

I strongly urge rejection of legislation giving professional sports leagues yet another special tool to use in an anti-competitive way.

Senator SPECTER. I would like to call on Mr. George Vukasin, president of the Oakland Coliseum Board.

Mr. VUKASIN. Thank you, Mr. Chairman.

Senator SPECTER. Your full statement will be placed in the record.

STATEMENT OF GEORGE VUKASIN

Mr. VUKASIN. I think, sir, it is important with my presence here today to leave the perspective to the members of the committee on behalf of the Oakland-Alameda Coliseum. But what was said was somewhat incorrect.

One, when the Oakland Raiders left Oakland, they had what was considered to be the third best contract relationship in the entire National Football League. When they left Oakland, they had as good as any bid from the city in the county of Alameda as there is any place in the NFL. We were simply outbid. Big city against a little city.

And in the comment that was made in the American tradition, I really challenge, Mr. Chairman. The little guy does not go out and push the big guy, particularly when the little guy has been successful in what he has been challenged to do in previous years. Like, for example, we were home to one of the most successful franchises in the NFL. The Raiders had the third highest revenues in the NFL and had enjoyed 12 years of sellout games, including preseason games. Although the Raiders had the highest ticket prices in the league, the fans paid the fare and filled our stadium of 54,616 for 121 straight games. The team's presence meant over $75 million annually to our economy. All of these factors made our decision in 1965 to build the coliseum look like a good one, which someone said previously, and we were left owing some $30 million in bonds.

As I see it, there are three points. Would it be Government intervention for Congress to provide fans protection when faced with a situation like Oakland, Baltimore and other cities? We are here today because the Federal Government has already intervened in the *Oakland* case. A Los Angeles Federal judge refused to let a Los Angeles jury evaluate the rights of Oakland in this matter. That same Federal Court concluded also that the NFL had no right to require one of its most successful franchises to stay in the community that was granted the franchise.

The rule requires a 75-percent affirmative vote for a franchise movement. It is said that requiring 75 percent of the teams to vote for a move is too demanding. However, what has not received much attention is that not one NFL owner voted to allow the Raiders to move.

The Commerce Committee has now reported S. 259 to restore stability and protect the public. The legislation will produce "a necessary clarification of the law," and we agree. So I think legislation on this subject would not constitute unwarranted Federal Government intervention. It would instead remove the Federal Government from an area where it should not be, and allow communities and stadium authorities, working with leagues, to protect themselves.

My second point is should standards be established to govern future moves? Congress failed to pass this legislation even though there was sponsorship of 200 legislators. If that legislation had passed, the Raiders would be in Oakland; the Colts would be in Baltimore; the threat of the Eagles would not have occurred; and the owner of the St. Louis Cardinals would not have been shuttling back and forth between New York and Phoenix.

I have just about 1 minute more to go.

The third point, antitrust protection to allow leagues to keep teams in a community. Everyone here today wants franchise stability. The *Raiders* case threatens the stability in almost every sport. If you want leagues to stand up and protect cities, they must be given the ability to do it without facing the incredible results of the NFL's efforts in Oakland.

Mr. Chairman, in conclusion, Oakland has been in court now for 5 years in the *Raiders* case, and continues to attempt to acquire the Raiders under the eminent domain laws in California. That case will be heard by the State court of appeals this year. We have and will continue to pursue any avenue that either will return the Raiders to Oakland or provide for an expansion team to a community with one of the most successful records of fan and community support. We believe that the NFL will expand if they can legally provide for team stability. We feel our case and record would allow us to compete successfully with any potential expansion city.

We have never asked for nor received a commitment from the NFL for an expansion team. What we have done is worked with them in court and in Congress to mutually provide for a solution. We will stand on our record and our ability to convince the NFL that Oakland should and will again become a city with a team in the National Football League. Thank you.

[Prepared statement follows:]

June 12, 1985

TESTIMONY OF
GEORGE VUKASIN
BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

My name is George Vukasin and I am President of Oakland Alameda Coliseum Commission. I am a former member of the Oakland City Council, the Oakland Port Commission and am a private businessman operating a firm that has been based in Oakland for 61 years.

The Oakland Coliseum was built in 1965 for the Oakland Raiders of the then American Football League. From then until 1980 when the Oakland Raiders announced their intention to leave for Los Angeles, we were home to one of the most successful franchises in the National Football League. The Raiders had the third highest revenues in the NFL and had enjoyed 12 years of sellout games including preseason games. Although the Raiders had the highest ticket prices in the League the fans paid the fare and filled our stadium of 54,616 for 121 straight games. The team's presence meant over $75 million annually to our economy. All of these factors made our decision in 1965 to build the Coliseum look like a good one.

We all know what then happened -- Oakland became the first city to fall victim to the auction block -- and the Raiders left the Bay Area for Los Angeles -- lured by cash grants and protected by the refusal of the Federal Courts to take into account what the Congress is now trying to legislate.

As I see it, these hearings are about three major aspects of franchise stability:

1. WOULD IT BE GOVERNMENT INTERVENTION FOR CONGRESS TO PROVIDE CITIES, STADIUM AUTHORITIES, AND FANS PROTECTION WHEN FACED WITH A SITUATION LIKE OAKLAND, BALTIMORE, PHILADELPHIA, ST. LOUIS AND NEW ORLEANS?

We are all here today because the Federal Government has already intervened in the Oakland case. A Los

Angeles Federal Judge refused to let a Los Angeles jury evaluate the rights of Oakland in this matter. That same Federal court concluded also that the NFL had no right to require one of its most successful franchises to stay in the community that was granted the franchise.

A lot has been written in this case about the NFL rule that required a 75% affirmative vote for a franchise move. It is said that requiring 75% of the teams to vote for a move is too demanding. However, what has not received much attention is that not one NFL owner voted to allow the Raiders move. When reasonable logic is applied to this fact, I fail to see the validity of the court's argument or the jury's decision.

We are not alone in criticizing that decision. More than 50 mayors of cities throughout the country supported legislation to retroactively overturn it. The Washington Post in a November 1984 Editorial called the decision allowing the Raiders to abandon Oakland a "wacky legal theory" and went on to say "it is hard to understand how even a hometown court failed to dismiss as preposterous the antitrust arguments here."

The Commerce Committee has now reported S. 259, the Danforth-Eagleton bill, to restore stability and protect the public. The Committee's report says that such legislation will produce "a necessary clarification of the law because it does not believe the types of intraleague agreements covered by the bill were intended to be illegal." We agree.

So I think legislation on this subject would not constitute unwarranted Federal Government intervention. It would instead remove the Federal Government from an area where it should not be -- and allow communities, and stadium authorities, working with leagues, to protect themselves.

2. SHOULD STANDARDS BE ESTABLISHED TO GOVERN FUTURE MOVES?

Although in 1982 the Congress failed to pass legislation that would have corrected the Oakland situation and provided protection to sports leagues to prevent such moves, 200 members of Congress thought it was necessary at the time and co-sponsored that legislation.

If that legislation had passed, the Raiders would be in Oakland; the Colts would be in Baltimore; the threat of the Eagles move would not have occurred; and the owner of the St. Louis Cardinals would not have been shuttling back and forth between New York and Phoenix.

That legislation would have also allowed the NFL to expand to those places that could support a team with the fans and communities realizing that their support would be rewarded with a stable franchise.

You are now considering setting varying types of standards to apply to team movement -- relating to revenues, fan support, etc. We applaud and support this effort. I must point out, however, that none of the standards now being discussed would have allowed the Raiders to move. They could not have qualified to leave Oakland under any objective standard or criterion.

3. ANTITRUST PROTECTION TO ALLOW LEAGUES TO KEEP TEAMS IN A COMMUNITY.

The Oakland Coliseum has been a party with the NFL in the Raiders case. We obviously support their efforts to keep the Raiders in Oakland. We are amazed that they could be forced to pay up to $70 million in treble damages, legal fees and interest because they fought in court for their rights and ours.

Everyone here today wants franchise stability. The Raiders case threatens that stability in almost every sport. If you want leagues to stand up and protect cities, they must be given the ability to do it without facing the incredible results of the NFL's efforts in Oakland. Vague antitrust rules in this area make it impossible for leagues to take a stand for the fans and for stability. Would you stick you neck out in the public interest if you had been penalized $70 million for having done so once before?

We also agree that the NFL's practice of sharing revenues be protected in any legislation that is passed.

This practice helps teams in communities such as Oakland, Baltimore, Pittsburgh, and St. Louis where there is no flood of TV revenue and working men and women support the teams. Without revenue sharing, teams will only be able to survive in major media markets, and the League will be organized at the dictates of television rather than for the fans and the communities that have provided the diverse strength of the NFL.

We also think that broadcast revenue sharing should be adopted in other sports to provide that same protection.

CONCLUSION

We commend you Mr. Chairman, as well as Senator DeConcini and other members of the Committee, for your efforts on behalf of cities and for team stability. We are working with you and members of the House who are moving in the same direction. Representative Fourtney "Pete" Stark, our representative in Congress, has taken the lead in this matter in the House. He, along with Senator DeConcini, was the principal sponsor of the legislation in the 1982 that, if passed, would have made this hearing today unnecensary.

Oakland has been in court now for five years in the Raiders case and continues to attempt to acquire the Raiders under the eminent domain laws in California. That case will be heard by the State Court of Appeals this year. We have and will continue to pursue any avenue that either will return the Raiders to Oakland or provide for an expansion team to a community with one of the most successful records of fan and community support. We believe that the NFL will expand if they can legally provide for team stability. We feel our case and record would allow us to compete successfully with any potential expansion city.

We feel the public will be well-served by enacting legislation that gives the leagues tools to prevent Oakland-type situations and to establish standards that would protect cities if a league attempted to move a successfully supported team.

We have never asked for nor received a commitment from the NFL for an expansion team. What we have done is worked with them in court and in Congress to mutually provide for a solution. We will stand on our record and our ability to convince the NFL that Oakland should and will again become a city with a team in the National Football League.

We have never asked for nor received a commitment from the NFL for an expansion team. What we have done is worked with them in court and in Congress to mutually provide for a solution. We will stand on our record and our ability to convince the NFL that Oakland should and will again become a city with a team in the National Football League.

The Washington Post
November 1, 1984

The League in Court

SUPREME COURT justices have been complaining, with some reason, about the proliferation of lawsuits based on wacky legal theories. A case before them provides an opportunity to do something about that. The court should be warned, though, that this is something about which feelings of the strongest kind are aroused—on both sides. It involves the National Football League and the Los Angeles (formerly Oakland) Raiders, and the question is whether a professional sports league can have a say over the location of its franchises.

To many the answer will seem obvious: of course it can. Legally, the National Football League is a set of contracts, which the owners of every team—they range from the widow of Carroll Rosenbloom to the city of Green Bay—sign. They join together to produce a single product, the entertainment—no, it's not a religion—known as professional football. They agree to play by a set of rules determined in a certain way, with a specified schedule. They agree to split television revenues. They agree that teams will have exclusive rights to sign players and can draft college players. And they agree that no franchise can be moved from one city to another without the approval of three-quarters of the teams' owners.

The NFL set about enforcing the last of these rules in 1980 when Al Davis, the owner of the Raiders, decided to move the team from Oakland to the more lucrative fields of Los Angeles. Mr. Davis counterattacked by arguing in court that the NFL's rules violated the antitrust laws. A Los Angeles judge and jury found for Mr. Davis, and the Raiders moved in 1982. The federal appeals court in San Francisco, a panel whose decisions have been reversed with startling regularity lately, upheld that decision, leaving the Raiders in Los Angeles and awarding Mr. Davis $34 million in treble damages for the NFL's supposed restriction of competition, even as he continues to enjoy the benefits of participation in the NFL.

It's hard to understand how even a home-town court failed to dismiss as preposterous the antitrust argument here. NFL teams are obviously not competitors as steel companies or computer software firms are; they are struggling not to put each other out of business but to stay in business together. To do that, they obviously have to act together in ways that wouldn't be allowed if they were entirely separate competitors. Applying the antitrust laws to intra-league agreements threatens the entire structure of professional sports.

Faced with Mr. Davis' move to Los Angeles and Robert Irsay's flight from Baltimore to Indianapolis, it might have been sensible for Congress to have passed legislation making it clear that the NFL's anti-movement clause is valid. But Congress decided to wait for the courts. The case on which the court's review is now sought provides an opportunity for it to speak clearly on this issue. If that discourages other teams from moving in violation of their own contracts, and if it should reduce the number of home-town lawsuits, so much the better—for the court as well as (almost) everyone else.

Senator SPECTER. Thank you very much, Mr. Vukasin.

I would like now to turn to Mr. Neal Pilson, executive vice president of CBS Broadcast Group.

STATEMENT OF NEAL H. PILSON

Mr. PILSON. Thank you, Senator, for the opportunity to appear before this committee. I will finish in less than 4 minutes because I seek only to address the very limited issue that relates to the language of S. 259 and the language of the existing antitrust exemption of Public Law 1291.

With respect to the concerns of Senator Gorton in his minority report, we point to the fact that in 1961 professional leagues were granted a limited antitrust exemption for the purpose of pooling their interests to license broadcasts on sponsored television, sponsored telecasts. However, Senate 259 appears to refer to the prior antitrust amendment as, in effect, allowing or in some ways permitting antitrust exemptions to extend to any form of television. Senator Gorton said in his minority report that the language of the committee bill is broad enough to permit the league to take some or all of its games off free TV. The purpose of our appearance is to emphasize that, in our judgment, from what we understand from, in fact, the NFL and other sources, we feel that this new change should be neutral insofar as it relates to broadcast television. We think it clear that the prior law enacted in 1961 basically limits the leagues to sponsored telecasts. We feel that the ambiguity can be removed from the current pending legislation that is under consideration by simply striking the language "any form of television," and that the amendment would then basically not change the current antitrust legislation, which I believe is what is intended. And the reference to any form of television could be eliminated without, in our judgment, impacting any other aspect of the bill.

I would like to use the remaining time, and I am watching my green light, to comment on some of the testimony that was given here this morning insofar as it relates to television.

The first comment relates to a statement, I believe Senator Gore made it and former Senator Tydings as well, that the three networks are locked into an NFL contract, and the statement that none of the three networks will even discuss a fall schedule with a competing league. Neither is true. There is no legal blockage of any kind to prevent any of the three networks from discussing a possible package agreement with the USFL. In fact, CBS, on two occasions, had such discussions with the USFL, first when they presented us with a spring schedule, and then when they presented us with a fall schedule. The spring schedule we turned down because of prior commitments to the NBA golf and college basketball. The fall schedule, in our judgment, made no economic sense. We were not interested in USFL on Saturdays where they would compete with college. And we basically were satisfied with our NFL relationship which, I would point out, extends through 1986 as does our college relationship.

We have no outstanding commitments with respect to 1987 and beyond. We would like the opportunity, without legislation which would impact on our freedom, to analyze the competing packages when we have the opportunity to do so without an imposition or requirement that we can or cannot deal with certain leagues. I would also point out the concept that if the NFL were limited to only two networks or only one network, there is no assurance that the third network would want to put on competing football. In fact, I think a strong argument would be made if two networks were carrying NFL on Sunday afternoon, the third network would probably be well served by putting on movies or some other type of program. And it would not directly compete with football.

Finally, a note about expansion, whether or not that was the major factor in TV rights fees, I believe I would share your views, sir, that it was not the major factor in the dramatic increase in television rights fees from the last contract to the current contract. Expansion was only a limited factor, not a major factor.

Senator **Specter**. Thank you very much, gentlemen.

That concludes our hearing.

[Whereupon, at 12:35 p.m., the committee adjourned, subject to the call of the Chair.]

[Prepared statement follows:]

CBS BROADCAST GROUP
CBS Television Network. CBS Entertainment. CBS Sports. CBS News. CBS Television Stations. CBS Radio
CBS Inc., 51 West 52 Street, New York, New York 10019 (212) 975-4321

Statement by NEAL H. PILSON,
Executive Vice President,
CBS/Broadcast Group

June 12, 1985

I am pleased to meet with this Committee to discuss certain aspects of bills designed to address the questions raised by franchise "free-agency".

While the stated purpose of the proposed legislation is to protect the public interest in maintaining the stability of professional team sports leagues, I would like to focus my remarks on the very limited aspects of these proposals which concern revenue sharing issues. I would like to confirm our interpretation that the present antitrust exemption, as set forth in 15 U.S.C. §1291, et seq., applies only to free over-the-air telecasting of games.

The language of the present antitrust provision clearly indicates that the present exemption only applies to "sponsored telecasting". However, nowhere in the law is there any definition of what constitutes a sponsored telecast. One must, therefore, review the legislative history to determine a more precise meaning of the term.

It is our position that, as with all exemptions from the antitrust laws, §1291 ought to be construed narrowly, with a view toward the purpose for which it was enacted. At the time of the passage of this bill, the National Football League ("NFL") was bound by a consent decree entered in an earlier action which prohibited it from entering into a television contract on behalf of its members, while its competitor, the American Football League, had entered into such a single network contract. The limited purpose of §1291 as we understand it was to enable the NFL to procure for its member teams the same type of contract with a television network that its competitor enjoyed. The hearings which took place prior to the enactment of this law clearly indicate that only the sale of over-the-air broadcast rights is subject to the exemption.

The following colloquy, recorded in the transcript of the hearing before the Antitrust Subcommittee of The Committee on The Judiciary Of The House Of Representatives on August 28, 1961 between Herbert Malitz, chief counsel to the Antitrust Subcommittee, and NFL Commissioner, Pete Rozelle, sets forth our point:

> Mr. Malitz: You understand, do you not, Mr. Rozelle, that this bill covers only the free telecasting of professional sports contests, and does not cover pay TV?
>
> Mr. Rozelle: Absolutely.

S.259 states that nothing contained therein shall alter or affect the applicability or inapplicability of the antitrust laws, including the exemption of §1291, to any agreement for the broadcasting or telecasting of the games of a professional sports league or its member clubs on "any form of television" (emphasis added). We are concerned that this new language will raise some doubts as to the original extent of the exemption provided by §1291. The Minority View expressed by Senator Gorton indicates that he shares our concern about the broad language of this bill. We foresee that this language may give rise to the exodus of NFL football programming from the free over-the-air networks to cable and pay television. Clearly, this will work to the disadvantage of viewers of professional football because they will be required to pay for a service presently available at no charge. In many areas, where pay TV or cable is not available, viewers will be unable altogether to have access to televised NFL football.

In reporting this bill, the Committee has stated that its intent was not to alter or affect the applicability or inapplicability of the present antitrust exemption, but we suggest that the language of S.259 which appears to expand that antitrust exemption from "sponsored telecasting" to "any form of television" may be contrary to that intent. We trust the record for these bills will support the continuation of our view as to the extent of the current antitrust exemption. It would be ironic if legislation intended to protect the interest of communities with respect to franchise stability concurrently planted the seed which would lead to the withdrawal of NFL professional football from free over-the-air television in those markets.

○